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NOMINATIONS—SEPTEMBER

HEARINGS

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

SEPTEMBER 10, 1985

TERRENCE M. SCANLON, TO BE CHAIRMAN, AND ANNE GRAHAM, TO BE A COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION

SEPTEMBER 16, 1985

BILL D. COLVIN, TO BE INSPECTOR GENERAL, NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

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TERRENCE M. SCANLON, TO BE CHAIRMAN AND ANNE GRAHAM, TO BE A COMMISSIONER, CONSUMER PRODUCT SAFETY COMMISSION

TUESDAY, SEPTEMBER 10, 1985

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 2 p.m., in room SR-253, Russell Senate Office Building, Hon. Robert Kasten presiding.

Staff members assigned to this hearing: Macky Ayers, professional staff member and Loretta Dunn, minority staff counsel.

OPENING STATEMENT BY SENATOR KASTEN

Senator KASTEN. The Committee on Commerce, Science, and Transportation is considering two Consumer Product Safety Commission nominations which have been submitted to the Senate by the President. The nominees are Terrence Scanlon, to be Chairman of the Consumer Product Safety Commission and Anne Graham to be a Commissioner of the Consumer Product Safety Commission.

Mr. Scanlon is presently serving as Chairman of the Consumer Product Safety Commission pursuant to a recess appointment he received in December 1984. He has been serving as a CPSC Commissioner since March 1983. Prior to joining the Commission, Chairman Scanlon served with several other Federal agencies, including the Small Business Administration and Minority Business Development Agency. He also served in the White House during the Kennedy and Johnson administrations.

Chairman Scanlon is a graduate of Villanova University, and has authored and coauthored a number of articles concerning product safety regulation.

Anne Graham is presently serving as Assistant Secretary for Legislation and Public Affairs at the Department of Education. Prior to that she served at the White House on President Reagan's transition team. She also served as press secretary for our esteemed former colleague Senator Harrison Schmitt of New Mexico. Ms. Graham holds an A.A. degree from Bradford College, attended Columbia University, and is the author of numerous articles and editorials concerning education.

OPENING STATEMENT BY SENATOR INOUYE

Senator INOUYE. Mr. Chairman, it is my privilige this afternoon to present to the committee the President's nominee for Chairman of the U.S. Consumer Product Safety Commission, Mr. Terrence Scanlon of the District of Columbia.

As you may be aware, Mr. Scanlon appeared before this committee as a nominee to the Commission in 1983. Since then he has been serving as Chairman of this Commission, as a result of a recess appointment. Mr. Chairman, I am pleased to support Mr. Scanlon's nomination to be the Chairman of the very important regulatory safety agency.

Mr. Scanlon's long public service began in 1963, when he served in the White House as staff assistant to the President of the United States. From there he went to the Small Business Administration, where he help to develop the Agency's first minority business program.

Prior to this appointment to the Consumer Product Safety Commission in 1983, he served as Chief of the Industry and Technology Division of the Department of Commerce's Minority Business Development Agency, and he was with that Agency for 14 years, serving in various capacities. He holds a degree in economics from Villanova University.

Mr. Chairman, as a member of this committee, I look forward to working with Mr. Scanlon on legislative and policy concerns in the consumer product safety area and so, Mr. Chairman and members, it is my privilige to present to you Terrence Scanlon. He has my support and I most respectively urge your favorable consideration for his nomination.

Thank you very much.

Senator KASTEN. Senator, thank you very much.

Senator Gore, do you have a statement that you would like to make at this time?

Senator GORE. Mr. Chairman, I am not a member of the subcommittee and I appreciate your courtesy in allowing me to come and attend the hearing. I have a great personal interest in these nominations and in consumer issues generally, and I did want to review the statements, and although a committee on which I do officially serve is meeting at the same time and I will not be able to be here for the entire hearing, I am going to review these statements and testimony very carefully.

I appreciate your courtesy. Thank you.

Senator KASTEN. Senator Gorton, do you have a statement at this time?

Senator GORTON. Thank you very much, Mr. Chairman. I do not have a statement. This is an important Commission and my presence here reflects my view that these nominees deserve our careful consideration.

Senator KASTEN. Chairman Scanlon and Ms. Graham, we are pleased to welcome both of you. We will start with Senator Bob Stafford. Welcome, Senator. It is a privilege to have you appear before our committee. I understand that you have an introductory statement on behalf of Anne Graham.

STATEMENT OF HON. ROBERT T. STAFFORD, U.S. SENATOR FROM VERMONT

Senator STAFFORD. Thank you very much, Mr. Chairman. I appreciate this courtesy from the committee. I am trying to get acquainted, Mr. Chairman, with a new pair of bifocals, something I have never used before, and thus far today I have found that when I want the long view I am getting the short view, and when I want the short view I am getting the long one, which leads to a certain amount of trepidation and uncertainty on my part.

Senator KASTEN. You sound like an economist.

Senator STAFFORD. It is my pleasure to have the opportunity to introduce Anne Graham to the members of this committee and support her nomination as Commissioner of the Consumer Product Safety Commission.

I have known and worked with Anne for over 4 years, beginning with her fine efforts on behalf of the National Commission on Excellence in Education. I believe her tenure with the Department has been one of the highest professional caliber. As Assistant Secretary for Legislation and Public Affairs, Anne has made our legislative work in the Subcommittee on Education, Arts, and the Humanities, which I do chair and will be leaving for momentarily, much more effective.

She has demonstrated excellent communications skills, proven administrative ability, and her experience in the House and Senate has given her a great deal of sensitivity to the need for a close and effective working relationship between the administration and Congress.

Although her nomination will certainly be a loss for all of us in the field of education, Anne will undoubtedly be a tremendous asset to the Commission and this committee on an array of consumer issues. She has been an outstanding appointee at the Department and I strongly believe she will enhance the capabilities of the Commission. She is an excellent choice for the position of Commissioner and I urge the committee to support her confirmation.

It is with considerable sadness that members of the Education Subcommittee on both the majority and minority sides say goodbye to Anne as we face a very active and difficult legislative schedule in the area of education in the next year. However, we wish her well and envy your opportunity to work closely with her in the future.

Thank you very much, Mr. Chairman.

Senator KASTEN. Thank you very much. We appreciate your coming to our committee and also appreciate your statement.

Senator STAFFORD. Mr. Chairman, I regret that I must ask to be excused, because I have another committee to chair this afternoon.

Senator KASTEN. We are expecting Senator Domenici, who wanted to make a statement, but I think at this time we will simply proceed and work in the statements of any Senators as they arrive.

I would like for Anne Graham and Terry Scanlon to come forward and we will begin. It is my understanding that each of you has a brief statement. We will begin with the statement from Commissioner Scanlon, with the understanding that we will break if any other Senator comes in to take part in the hearing.

So, Terry, why don't you go ahead?

[The biographical sketch and prehearing questions and answers follow:]

BIOGRAPHICAL SKETCH OF TERRENCE M. SCANLON

Residence: 4510 Dexter Street, N.W., Washington, D.C.

Office: U.S. Consumer Product Safety Commission, 1111 18th Street, N.W., Washington, D.C.

Born: May 1, 1939 in Milwaukee, Wisconsin.

Married to Judy Ball Scanlon.

Children: Michael Mansfield Scanlon, Age 13; Justin Ball Scanlon, Age 12; Brendan Hayes Scanlon, Age 6.

Education: B.S Economics, Villanova University School of Commerce and Finance, graduated in 1961.

Emploment Experience: U.S. Consumer Product Safety Commission (CPSC); currently serving as Chairman, U.S. Consumer Product Safety Commission (recess appointment December 31, 1984); Commissioner, U.S. Consumer Product Safety Commission (March 1983-December 1984).

Minority Business Development Agency (MBDA), U.S. Department of Commerce: Chief, Industry and Technology Division, 1981-1983; Member, President Elect's Regional Development Commissions Transition Team, November and December 1980.

International Trade Administration, U.S. Department of Commerce: March to August, 1980 and January to May, 1981; responsible for the preliminary planning of a state and local government program for export promotion and reverse investment. Developed contacts with fedreal departments, states, large cities and national/international trade associations; Served as the U.S. Commerce Department Loaned Executive to the Combined Federal Campaign (August-November 1980).

QUESTIONS OF THE MAJORITY AND THE ANSWERS

Question 1. Please state whether you agree or disagree and why, with each of the following recommendations concerning the Consumer Product Safety Commission (CPSC) by the President's Public Sector Survey on Cost Control (Grace Commission): (a) Reorganize the staff of the CPSC through elimination of the Office of Program Managemnt, reduction of the ratio of management to professional staff, and establishment of performance evaluation criteria; (b) Reduce the staff of the Administration Directorate; (c) Consolidate CPSC Headquarters; (d) Abolish the five regional CPSC offices.

Answer. (a) The issues raised in parts 1(a) [and 1(d)] touch upon the areas of matrix management and field operations now being examined by a Commission-initiated independent Management Review Task Force. I am holding in abeyance my opinion of the Office of Program Management structure and the field structure pending the submission of that report and its findings; (b) The staff of the Administrative Directorate, I am pleased to report, has already been reduced. The 10% reduction in administrative personnel accomplished in FY 1985 permits a greater portion of Commission resources to be devoted to its statutory mission; (c) My colleagues and I have explored the costs and benefits associated with maintaining the Commission's current office arrangements and have concluded that, on balance, the case for consolidation has not yet been made. A Washington presence is very important for the CPSC. The benefits of an office is very important for the CPSC. The benefits of an office in downtown Washington are (1) Convenience for all member of the public who participate in or observe for all members of the public who participate in or observe Commission proceedings, (2) proximity to the Congress, consumer groups and industry, to ensure ready access for those most concerned or affected by Commission activities, and (3) proximity to national media organizations, upon which the Commission must rely to promote quick and accurate disemination of consumer product safety information. The expense of maintaining this valuable presence is the difference in rent between our downtown location and our Bethesda location, or approximately $6.50 per square foot. This is much less than the moving and remodeling costs which would be required to relocate the Commissioners in Bethesda. The benefits of a permanent downtown presence outweigh this incremental cost. (d) As I noted in my answer to question 1(a), the field structure now is under independent review. In any event, however, I remain strongly committed to an effective field structure for the CPSC. In that regard, I was pleased to note that, when the Grace Commission suggested possible abolishment of the CPSC's five regional offices, it proposed as one alternative the establishment of one or two resident posts in each State. Although I reserve judgment on whether this proposal would be the most efficacious use of CPSC resources, it is plain that the Grace Commission report acknowledged the importance of the field structure to the successful accomplishment of the CPSC's mission.

Question 2. In 1984 you suggested that some CPSC projects currently handled by outside contractors could be done "in-house" for less money. As Chairman do you intend to make any changes in line with this suggestion?

Answer. As Chairman, I shall carefully scrutinize whether outside contractors are necessary when there is a possibility of "in-house" capacity, consistent with the concerns I expressed as a Commissioner. When we have the staff expertise to do a project "in-house", I believe we should do so in order that our limited resources be available for those projects requiring outside expertise. This, in my view, is the most cost-effective use of CPSC resources.

Question 3. In the past you have criticized "backdoor rulemaking" at the CPSC. Do you believe changes should be made in the CPSC's organic statute to prevent such activities?

Answer. My concern with "backdoor rulemaking" by the CPSC was based upon the Commission's near abandonment of the rulemaking process to address safety hazards by using section 15 generically and industrywide, notwithstanding the 1981 Congressional Amendments to our statutes. Those amendments require that rulemaking the deferred in favor of voluntary standards in certain circumstances. Rather than use the rulemaking process, however, Section 15, was being used generically and industrywide in such cases as mesh-sided cribs and expandable enclosures. I believe this misuse of Section 15 circumvents the rulemaking requirements of the 1981 amendments. I am delighted that this trend has been reversed at CPSC, as evidenced in part by the recent Advance Notice of Proposed Rulemaking (ANPR) on All Terrain Vehicles, only the second ANPR the Commission has issued since 1981. Rulemaking procedures permit broader public input, giving consumers and other interested parties an opportunity to be heard in a rulemaking proceeding, which is not generally available in a Section 15 adjudication. So long as the Commission abides by its statutory mandate, I do not believe changes in our statutes are necessary.

Question 4. As Chairman, how do you intend to ensure that the CPSC is accountable to Congress?

Answer. Accountability begins with faithful adherence to the laws enacted by the Congress. I pledge vigorous enforcement of our organic statutes, as most recently amended in significant part in 1981. Accountability also occurs through oversight and appropriation hearings. These are excellent opportunities to share views with the Members of Congress and learn firsthand the concerns of the Members most directly involved in monitoring CPSC activities. During these past few months as Chairman by recess appointment, I have maintained close communication with the Congress, not only during oversight and authorization periods, but more generally whenever consumer product safety issues have arisen. That record speaks for itself. If confirmed as Chairman, I pledge that I will maintain this close relationship.

Question 5. A CPSC staff report issued earlier this year concluded that CPSC staff suggestions were being ignored or unnecessary delays were occuring during the development of a few voluntary product standards. How should the CPSC respond in such instances?

Answer. In general, there has been satisfactory progress among the 56 voluntary standards that the Commission staff has been working on during fiscal year 1985. To be sure, there are varying rates of progress from project to project. While Commission policy requires the staff to submit semiannual summaries of voluntary standards activity, I have requested quarterly updates to monitor progress more closely. Each industry's cooperation level is easily identified in this public document. If the CPSC staff confronts delays or insufficient cooperation during voluntary standard development, it informs the Commission. The Commission can then assess the risks addressed and the reason for delay. The staff, as yet, has not asked the Commission for this review, which is another indicator that voluntary cooperation between government and industry is working to provide cost effective protection for consumers. Of course, if progress in development of a voluntary standard is unsatisfactory, the Commission is prepared to take mandatory steps to address unreasonable risks.

Question 6. Under what circumstances should the CPSC seek elimination of a product safety rule or standard? Please describe any rule or standard to which you believe such circumstances may currently apply.

Answer. Consistent with the CPSA, I believe a product safety rule or standard should be revoked whenever it is no longer needed to eliminate or reduce an unreasonable risk of injury. Here is an example. Recently, I was pleased to join with a Commission majority in revoking the safety standard requiring oxygen depletion sensor (ODS) shutoff systems for unvented gas-fired space heaters. With respect to other candidates for rule-revocation, I am in the process of reviewing our rules and standards but I have no recommendations at this time.

Questions of the Minority and the Answers

Question 1. What do you consider to be the mission of the Consumer Product Safety Commission? Please define the relationship between this mission and the role of industry in the area of consumer product safety.

Answer. The mission of the Consumer Product Safety Commission is inextricably tied to the purpose of the Consumer Product Safety Act:

(1) to protect the public against unreasonable risks of injury associated with consumer products;

(2) to assist consumers in evaluating the comparative safety of consumer products;

(3) to develop uniform safety standards for consumer products and to minimize conflicting State and local regulations; and

(4) to promote research and investigation into cause and prevention of product-related deaths, illnesses, and injuries.

As the Commission advances these statutory purposes, its relationship with industry will vary. Ideally, industry, together with the public and consumer groups, voluntarily plays a cooperative role to promote product safety and to help identify and prevent unreasonable risks associated with consumer products. We have witnessed this kind of cooperation increasing over the past several years.

In addition to cooperative and voluntary efforts, industry has certain reporting responsibilites under section 15 of the Consumer Product Safety Act. Industry therefore has a self-regulatory role to play in the statutory scheme. An increase in section 15 reports over the past years suggest an increasing appreciation by industry of this rule, as well.

Finally, the Consumer Product Safety Act anticipates an adversarial relationship between the Commission and industry in situations where, for example, consumer product safety standards are violated, or where imminently hazardous consumer products are introduced into the marketplace. What we have seen over the past several years, however, is that sound enforcement policies, together with responsible industries, can make these occasions relatively infrequent.

Question 2. What do you believe to be the successes of the Consumer Product Safety Commission during its existence?

Answer. The Commission has been increasingly successful in its voluntary standards development work, most recently with its decision to terminate a rulemaking proceeding on chain saw kickback injury. This Commission decisioin is particularly noteworthy in light of the emphasis placed upon voluntary standards by the Congress in the 1981 amendments to our statutes. Another success would be the prudent and effective compliance activities of the Commission. For example, the Agency recently settled a civil penalty action pending against a manufacturer for $800,000—the largest assessment in the Commission's history. I also would rank as a success the information and education efforts exemplified by our "Safety for Older Consumers Project" and our childhood poison prevention efforts. Working together with consumers, industry, and State and local government, these campaigns have promoted product safety economically and efficiently.

Question 3. What do you see as the Commission's most significant shortcomings during its existence? What changes would you favor to overcome these shortcomings?

Answer. The Commission's most significant shortcoming during its early years was its tendency to pursue mandatory solutions to product safety issues too quickly. This was remedied, in large part, by Congress in its 1981 amendments to the Commission's statutes. Also, during the Commission's early years it did not always adequately target priorities or allocate resources for specific projects. In recent years the Commission has improved its planning, budgeting and targeting. I pledge to continue this trend. Finally, the primary data collection system at CPSC, the National Electronic Injury Surveillance System (NEISS) has lacked a sufficient behavorial component. The Commission is examining a pilot project designed to test a possible means of remedying that situation.

Question 4. Do you believe that the Consumer Product Safety Commission should remain an independent regulatory agency or should the agency be incorporated within one of the executive departments?

Answer. For at least some of the reasons described in may answer to question five, I believe that the Commission should remain an independent regulatory agency.

Question 5. Do you believe that the Consumer Product Safety Commission should continue as a five member Commission? Would you support or oppose the reorganization of the Commission into an agency directed by a single administrator?

Answer. There are arguments both for and against the Commission remaining a collegial body. Perhaps the strongest argument in favor is the diversity of opinion such a body tends to generate. Five Commissioners are likely to reflect a wider perspective than will a single administrator. Also, a collegial body is somewhat less prone to abuses of power than is a single administrator.

Admittedly, there are some problems that attend a collegial form of administration. First, it takes longer to reach a decision and this delay often causes the decision to be more costly. Also, problems can arise in the day-to-day operation of a collegial body. If collegial bodies are to meet statutory responsibilities and avoid getting bogged down in a myriad of detail, they must differentiate between policy questions and day-to-day management decisions and leave the latter to the person charged with the administrative responsibility (in the case of the CPSC, the Chairman). Too little respect for managment prerogatives can turn the members of a collegial body away from important policy questions. On the whole, I believe that a collegial body provides benefits which outweigh its costs.

Question 6. Do you believe that the Commission's priority setting mechanisms are adequate? If not, what do you believe would be a more effective means for establishing Commission priorities?

Answer. Yes. I welcome the involvement of consumer interests, industry, and State and local officials in the priority-setting process. Our current procedures encompass public hearings and an opportunity for written comment, and these elements have benefitted the Commission's decisionmaking process immeasurably.

Question 7. In 1981, the Committee voted to emphasize the use of voluntary standards over the application of mandatory standards. What are your views regarding voluntary and mandatory standards?

Answer. I fully support the 1981 Amendments to the CPSA which require the Commission to give preference to voluntary standards. There are many advantages to voluntary standards. They promote cooperation on product safety issues; they can be implemented more quickly; and they can be more easily enhanced to keep up with changing technology. In sum, they can offer more protection for the consumer. Mandatory standards are appropriate only as a last resort. There are certain inherent disadvantages to mandatory standards. They can become dated and obsolete by the end of the lengthy rulemaking process. Additionally, mandatory standard development tends to be very resource intensive. Our engineering staff, while very professional, can not possess expertise in each of the approximately 15,000 types of consumer products within the Commission's jurisdiction. However, with voluntary standards, industry experts more often work with our staff in formulating safety standards. This is much quicker, cheaper, and resource effective. Since 1973, the Consumer Product Safety Commission has worked with over 30 voluntary standards organizations on over 100 voluntary standards projects. Currently, work is underway on 56 voluntary standards projects. Also, we now have a full time voluntary standards coordinator, who I was pleased to appoint as soon as I became Chairman.

Questions 8. How do you visualize the relationship between the Consumer Product Safety Commission and State and local authorities?

Answer. I see a continuing need for the Commission to share information and resources with State and local authorities to maximize consumer safety efforts. For fiscal year 1986, we have budgeted $250,000 for State and local activities, which is $250,000 more than was budgeted when I joined the Commission two and one-half years ago. I hope we can increase that figure in years to come because consumer officials at the State and local level can often assist the Commission with compliance, as well as information dissemination activities. In many cases, the states perform good compliance work, and with proper coordination and judicious use of small dollar contracts, we can provide greater product safety protection.

Questions 9. What percentage of the Commission's budget do you believe should be allocated to education rather than standard setting activity?

Answer. Circumstances change from year to year, making fixed percentage figures for these activities problematic. Generally, however, I am concerned over the relatively modest amount of resources budgeted for Information and Education. Our Epidemiological statistics show that a large number of injuries and fatalities occur through consumer misuse of products. If we can provide prevention oriented safety information in a timely manner, we can decrease the annual injury toll. For example, our Safety for Older Consumers Information and Education campaign features a household safety checklist to eliminate 20 or more of the most frequent hazards to the elderly. We have delivered tens of thousands of these checklists into the hands of the aging for a very small cost—approximately $150,000. And our surveys have shown that this type of campaign has a positive effect on older consumers. Such programs provide a cost-effective approach to consumer safety, particularly when one considers that effective education programs are often the product of the same Commission research necessary for standard setting.

Question 10. What types of consumer education programs do you believe are most effective?

Answer. The delivery medium for various Information & Education campaigns necessarily depends on the nature of the risk and audience to which the campaign is directed. The Commission has taken advantage of diverse media to reach consumers. For example, the Commission, in conjunction with the National Spa and Pool Institute, recently produced public service announcements at virtually no cost to the Government on swimming and diving safety featuring Olympic gold medalist Greg Louganis. The Commission has distributed these segments to over 500 stations. The Commission also sponsors safety seminars, such as the National Conference on Safety for Older Consumers, in its effort to reach consumers. These programs, supplemental with the Commission's safety alerts and press releases, have proven to be effective approaches to enhancing the Commission's product safety efforts.

Question 11. What steps will you take to preserve your independence from political and industry pressures? What provisions in the Consumer Product Safety Act do you see as designed to preserve your independence from such pressure?

Answer. I believe that over the past two and one half years, my conduct as Commissioner, and then as Chairman through recess appointment, has consistently demonstrated an appreciation for the need to preserve my independence from undue political or industry pressure. I have always sought to keep open the channels of communication with all parties interested in Commission proceedings, and have taken great care to ensure that such communication is on the record and available for public and Congressional scrutiny. I pledge to continue to approach my responsibilities at the Commission in that same spirit. Section 4 and sections 27(k)(1) and (2) of the Consumer Product Safety Act are designed, in large part, to ensure that Commissioners preserve their independence. These provisions, which establish appointive seven-year terms and limit the exercise of certain Executive branch prerogatives, insultate Commissioners from external pressures.

Question 12. Do you believe the Consumer Product Safety Commission should have authority over amusement park rides?

Answer. Consistent with the current mandate of the Consumer Product Safety Act, I believe the Commission should exercise jurisdiction only over mobile amusement rides. State and local jurisdictions can best provide regulatory oversight for rides located at fixed-site amusement parks.

Question 13. In a letter to Senator Kasten, Chairman of the Senate Commerce Committee's Consumer Subcommittee in May of 1981, Office of Management and Budget Director Stockman said the Administration favored removing the Consumer Product Safety Commission's authority to regulate chronic hazards. Do you agree?

Answer. The CPSC has a unique responsibility to guard the American public against unreasonable risks of injury from consumer products and should not neglect any aspect of that responsibility. However, numerous other federal agencies are working on chronic hazards in a variety of ways, and every effort should be made to avoid duplication of effort. For instance, in the area of indoor air quality, no less than 15 other federal agencies are working on this subject in one way or another and an interagency Committee on Indoor Air Quality (CIAQ) has been established to help coordinate their efforts. In addition to co-chairing the CIAQ, the CPSC chairs one of its working groups (on combustion sources) and co-chairs two others.

Question 14. In March of 1981, David Stockman, Director of OMB, testified concerning the Administration's proposed budget cuts for the Consumer Product Safety Commission. In his testimony, Mr. Stockman emphasized that the cuts were not designed solely to reduce the size of the Federal budget deficit but were an integral part of the Administration's efforts to redirect regulatory policy. Do you share Mr. Stockman's views on this two-pronged approach to cutting the Consumer Product Safety Commission's budget?

Answer. The 1981 reduction in the Commission's budget were plainly driven, in part, by the need to address serious budgetary problems. Redirection of the Commission's regulatory policy occurred in 1981 as well, when the Congress and the Administration agreed that more emphasis should be placed on voluntary standards. Voluntary standards tend to be less resource intensive, thereby reducing the Commission's budgetary requirements. Considered in such a light, I support this two-pronged approach.

Question 15. One consumer Product Safety Commission Commissioner has charged that in the case of the accordion-style baby gates the Consumer Product Safety Commission, which had been aware of deaths and injuries caused by the gates since 1981, waited until January of 1985 to halt new production of the gates. The industry has been working on a voluntary standard in 1982, but the standard is still not complete. How much time should the Consumer Product Safety Commission allow industry to adopt a voluntary standard?

Answer. The length of time that should be necessary to develop a voluntary standard will vary depending on the product, its design, the number of manufacturers in the marketplace, their physical location and the sophistication of the industry. The staff monitors the voluntary standards process on a case by case basis, and keeps the Commission advised as to its progress. If such progress is inadequate, I would readily entertain consideration of compulsory methods to ensure product safety. With respect to accordion-style baby gates, I would note that all major manufacturers on their own agreed to cease production and distribution. Contrary to the CPSC Commissioner's implications referenced in the question, this was not a case of a failed voluntary standard. Rather, this was a case in which, before standards could solve the problem, industry took upon itself to remedy the situation by removing the product from the marketplace.

Question 16. Would you agree with a statement made in the Consumer Product Safety Commission's 10th anniversary report that applying Section 15 against an entire industry "provides an efficient and flexible mechanism to protect the American public"?

Answer. No. As a general matter, section 15 of the CPSA should be used in a narrowly focused way to correct specific product hazards. Such cases, which oftern may relate to quality control problems, would typically involve a single manufacturer. A section 15 action is available, of course, in the rare instance where multiple firms might produce and distribute similar consumer products containing a defect which presents a substantial product hazard.

Question 17. Do you support the new Section 15 guidelines for firms reporting potential hazards?

Answer. Any answer I supply now would be premature. The Commission has sought public comment on the guidelines, and the comments are now being analyuzed by the staff for review by the Commission.

Question 18. In your opinion, will the Commission be able to absorb another 6 or 7 percent cut in fiscal year 1987?

Answer. I do not anticipate a reduction of that magnitude.

Question 19. Can you outline what action the Commission is taking concerning the deaths and injuries that have been associated with "all-terrain vehicles?

Answer. To address this problem the CPSC took action on April 3, 1985. It created a special ATV task force to carry out a 7-point action plan.

1. *An Advanced Notice of Proposed Rulemaking (ANPR):* On May 31, 1985, the Commission published an ANPR, the first since 1982.
2. *Hazard Analysis:* The Commisison and its ATV Task Force began an hazard analysis to identify and investigate potential ATV hazards in FY 1985. This effort, which will continue into FY 1986, inludes a user panel survey and analysis of information from on-site investigations and injury reports.
3. *Engineering, Human Factors and Medical Studies:* The Commission's ATV Task Force also initiated engineering, human factors and medical analyses to establish a method of evaluating the performance of ATVs. One human factors study has already been completed and engineering tests of ATVs, over various types of terrain, are underway with more planned. A preliminary ATV injury analysis should be completed in the next six months.
4. *Public Hearings:* The Commission has held public hearings on ATVs in: Jackson, Mississippi; Dallas, Texas; Concord, New Hampshire and Milwaukee, Wisconsin. The Commission will be holding one more public hearing in Los, Angeles, California, next month.
5. *Monitoring Voluntary Standards Development:* The Commission, has been actively monitoring the development and processing of a voluntary standard for ATVs. A draft standard with sections on age labeling, rider training and standarization of controls, has already been proposed and submitted for comment. It could be approved by the American National Standards Institute and in place as early as October of this year.

6. *Share information with user groups plus federal, state and local officials:* The ATV Task Force has established an ATV Clearinghose to provide a communications network for sharing ATV data. The Clearinghouse now has over 220 contacts on its mailing list.

7. *Monitoring the industry's education and training effort:* The Commission has been working with industry to ensure that suitable educational material is provided to ATV users. The voluntary standard on ATVs now under consideration provides that material on ATV selection, basic operating techniques and safe riding practices will be made available to ATV dealers for distribution to their customers. Also, the draft standard provides that the dealers will be encouraged to inform ATV purchasers of the importance of the ATV training information.

Question 20. What is your opinion of current Commission injury data colleciton, in particular, the National Electronic Injury Surveillance System (NEISIS)?

Answer. NEISS has its flaws—the lack of behavioral data being the most significant one—but it also delivers a considerable amount of useful information. Recently, a pilot project was initiated in eight hospitals to test the feasibility of obtaining more behavioral data through NEISIS and, if the results are positive, I would hope the Commission would move to acquire such data on a routine basis. With it, we would have a better idea of whether rising accident statistics related to a particular product require a major engineering study or can best be addressed by an educational campaign.

Question 21. How do you feel about the Consumer Product Safety Commission Chairman and Commissioners traveling a great deal around the country?

Answer. If the travel helps carry out the mandate of the Commission and heightens the awareness of the agency's safety efforts, it can be a prudent and cost effective use of agency resources. I am not aware of any travel abuses by any of the Commissioners at this time.

Question 22. Please list all votes on public matters you have cast since you became a Commissioner, the outcome of the vote, and your reasons for the vote.

Answer. Attached is a copy of my voting record on all public matters since I became Commissioner. I would be pleased to discuss the reasons for my vote on any particular matter that you wish addressed.

Rev. 12/31/84

Consumer Product Safety Commission

Summary Record of Commission Actions/Votes

3/30/83 - 12/31/84

[redacted]

Chairman Nancy Harvey Steorts
[redacted]
Commissioner Edith Barksdale Sloan (until 11/18/83)
Commissioner Stuart M. Statler
Commissioner Sam Zagoria (until 1/22/84)
Commissioner Terrence Scanlon (as of 3/30/83)
Commissioner Saundra Brown Armstrong (as of 11/22/83)
Commissioner Carol G. Dawson (as of 7/6/84)

Note: This summary record of Commission actions/votes fulfills the indexing requirements of subsection (a)(2) of the Freedom of Information Act, 5 U.S.C. 552. It is intended as a reference supplement to the official Minutes/Records of Commission Actions, which are available in the Office of the Secretary. Matters that are not public information at this time; e.g., certain enforcement actions, are not included in this summary. Some of the items concerning FOIA appeals, where the votes were unanimous, are combined in the interest of space; in these cases, the number of appeals is noted in parentheses.

* - Opinion Filed

DATE	DECISION	Steorts	Sloan	Statler	Zagoria	Vacancy
3/2/83 (Ballot)	Mesh-Sided Play Yards and Portable Cribs: Proposed Rules Under Provisions of Section 30(d) of the CPSA	Yes	Yes	Yes	Yes	
3/2/83	Honeywell, Inc.: Issuance of Administrative Complaint, CPSC Docket 83-2	Yes	Yes	Yes	Yes	
3/9/83 (Ballot)	Sun and Sand Imports, Ltd.: Authorize Issuance of Complaint, CPSC Docket 83-1	Yes	Yes	Yes	Yes	
3/9/83 (Ballot)	FOIA Appeals of Denials: Affirm Withholdings (3)	Yes	Yes	Yes	Yes	
3/9/83 (Ballot)	FPE/Reliance Circuit Breakers: Approve Negotiated Press Release	Yes	Yes	Yes	Yes	
3/9/83	Aluminum Wire Connectors: Deny Petition AP 80-2 Requesting Labeling Rule	Yes	Yes	Yes	Yes	
						Scanlon
3/30/83 (Ballot)	Semi-Annual Regulatory Agenda: Approval	Yes	Yes	Yes	Yes	(Vote Prior to joining CPSC)
3/30/83 (Ballot)	Emerson Thermostat Controls: Withholding of Documents Under Section 6(b) of the CPSA	Yes	Yes	Yes	Yes	(Vote Prior to joining CPSC)
3/30/83 (Ballot)	Toy Chests: Approve Federal Register Proposing Mandatory Standard	Yes	Yes	Yes	Yes	(Vote Prior to joining CPSC)
3/30/83	Unvented Gas-Space Heaters: Revocation (Tie Vote - No Action)	No	No	Yes	Yes	(Vote Prior to joining CPSC)
4/5/83 (Ballot)	Children's Expandable Enclosures: Proposed 30(d) Rule Transferring from FHSA to CPSA	Not Voting	Yes	Yes	Yes	Abstain
4/13/83 (Ballot)	FOIA Appeals of Denials: Affirm Withholdings (3)	Yes	Yes	Yes	Yes	(Vote Prior to joining CPSC)
4/13/83 (Ballot)	Robertshaw Controls Co., CPSC Docket 82-3: Approval of Opinion and Order	Yes	Yes	Yes	Yes	(Vote Prior to joining CPSC)
4/13/83	Coal and Wood Burning Stoves: Approval of Final Rule Under Section 27(e) of the CPSA	Yes	Yes	Yes	Yes	Abstain
4/13/83	Urea-Formaldehyde Foam Insulation Litigation: Petition for Rehearing Before Fifth Circuit Three Judge Panel	Yes	Yes	*Yes No in part	Yes	Abstain
4/20/83	Benzidine Congener Dyes: Reconsider and Deny Petition CP 79-1; Disseminate a Fact Sheet on Potential Hazard	Yes	Yes	Yes	Yes	Yes
4/27/83 (Ballot)	Metal Chimney: Issuance of Safety Alert	Yes	Yes	Yes	Yes	Abstain
4/27/83 (Ballot)	Federal Asbestos Task Force: Charter and Membership	Yes	Yes	Yes	Yes	(Vote Prior to joining CPSC)
4/27/83 (Ballot)	Clothing Textiles and Children's Sleepwear: Final Rule Allowing Use of Alternate Apparatus and Procedures for Flammability Testing	Yes	Yes	Yes	Yes	Yes

4/27/83 (Ballot)	Architectural Glazing: Withdrawal of Proposed Certification Rule	Yes	Yes	Yes	Yes	Yes
5/25/83	Athlone Industries, Inc.: Acceptance of Court Decision; Dismiss All Pending Administrative Cases for the Assessment of Civil Penalties and Refer Them to Department of Justice	Yes	Yes	Yes	Not Voting	Yes
5/26/83	Unvented Gas-Fired Space Heaters: Revocation/Exemption Applications: Approval of Revocation/Deferral of Action on Applications	*No	*No	Yes	*Yes	*Yes
6/2/83 (Ballot)	CHAP on Nitrosamines: request Nominees	No	Yes	Yes	Yes	Yes
6/2/83 (Ballot)	CPSC Comment on H.R. 1880, The Cigarette Safety Act	Yes	Yes	Yes	Yes	No (Separate Views)
6/2/83 (Ballot)	Aluminum Wire Connectors: Approve Petition Denial Letter, AP 80-2	Yes	Yes	Yes	Yes	Abstain
6/2/83 (Ballot)	Robertshaw Controls Co., CPSC Docket 82-3: Order Amending the Commission's Opinion	Yes	Yes	Yes	Yes	Abstain
6/2/83 (Ballot)	FOIA Appeals of Denials: Affirm Withholdings (2)	Yes	Yes	Yes	Yes	Yes
6/2/83 (Ballot)	Aluminum Wire: Return Subpoenaed Documents to Manufacturers	Yes	Yes	Yes	Yes	Yes
6/2/83	Physician's Samples: Withdrawal of Proposed Statement of Policy and Interpretation re: PPPA Special Packaging Requirement	Yes	*No	Yes	Yes	Yes
6/2/83	Cerico, Inc.: Provisional Acceptance of Consent Order Agreement, CPSC Docket 83-C0002	Yes	Yes	Yes	Yes	Yes
6/15/83 (Ballot)	Children's Expandable Enclosures: Approval of Revised Federal Register Notice Proposing 30(d) Rule, to Include Discussion of Recent UFFI Judicial Decision	Yes	Yes, but without discussion	Yes	Yes	Yes
6/15/83 (Ballot)	Proposed Amendment to Procedures for Petitions for Development of Safety Standards and for Oral Presentations: Approval	Yes	Yes	Yes	Yes	Yes
6/15/83 (Ballot)	FOIA Appeals of Denials: Affirm Withholdings (2)	Yes	Yes	Yes	Yes	Yes
6/15/83 (Ballot)	Commission Priorities for FY 1985: Announce Public Meeting	Yes	Yes	Yes	Yes	Yes
6/28/83	Urea-Formaldehyde Foam Insulation Litigation: Seek Writ of Certiorari from Supreme Court	Yes	Yes	No	Yes	No
7/6/83 (Ballot)	Robertshaw Company: Seek Civil Penalty	Yes	Yes	Yes	Yes	Yes
7/6/83 (Ballot)	Draft Notice Amending Labeling Rule for Coal and Wood Burning Stove	Yes	Yes	Yes	Yes	Yes
7/6/83 (Ballot)	CHAP on Asbestos: Extend the Due Date of Report for 60 Days	Yes	Yes	Yes	Yes	Yes
7/6/83 (Ballot)	Draft Notice Confirming the Effective Date of CB Antenna Standard and Certification Regulation	Yes	Yes	Yes	Yes	Abstain
7/6/83 (Ballot)	Camphor-Containing Products: Terminate the Project	Yes	Yes	Yes	Yes	Yes
7/6/83 (Ballot)	Diphenhydramine Preparations: Draft Proposed Rule Requiring Special Packaging	Yes	Yes	Yes	Not Voting	Yes
7/20/83	Mesh-Sided Cribs and Playpens: Approval of Final 30(d) Rule	Yes	Yes	Yes	Yes	Not Present
8/3/83 (Ballot)	Unvented Gas-Fired Space Heaters, Application for Exemption from Preemption: Approve Letter to Applicants	Yes	No	Yes	Yes	Yes
8/3/83 (Ballot)	FOIA Appeal of Denial: Affirm Withholding	Yes	Yes	Yes	Yes	Yes
8/3/83 (Ballot)	Security Regulation for Confidential Business Information Obtained from EPA: Approve Final Regulation	Yes	Yes	Yes	Yes	Yes
8/10/83 (Ballot)	Benzidine Congener Dyes: Approval of Petition CP 79-1 Denial Letter and Fact Sheet	Yes	Yes	Yes	Yes	Yes
8/10/83 (Ballot)	Public Participation in Commission Meetings: Amendment to Rules of Procedures	Yes	Yes	Yes	Yes	Yes
8/10/83 (Ballot)	Federal Tort Claims Act For Damages: Approval of Draft Denial Letter	Yes	Yes	Yes	Yes	Yes
8/10/83 (Ballot)	Cerico, Inc., CPSC Docket 83-C0002: Accept Final Consent Agreement	Yes	Yes	Yes	Yes	Yes
8/17/83 (Ballot)	FOIA Appeals of Denials: Affirm Withholdings (2)	Yes	Yes	Yes	Yes	Yes
8/17/83 (Ballot)	FOIA Appeal of Denial (S301152): Affirm Withholding	Yes	Yes	Yes	Yes	No
8/17/83 (Ballot)	Fiscal Year 1984 Operating Plan	Yes	Yes	Yes	Yes	Yes
8/17/83	Toy Chests: Withdrawal of Proposed Rule	*Yes	*No	*Yes	*No	*Yes
9/7/83	Smoke Detector Program: 1) Focus Promotion Activities During Fire Prevention Week, 2) To Allocate Additional Funds, Materials	(1) No (2) Yes	(1) No (2) Yes	(1) Yes (2) Yes	(1) Yes (2) Yes	(1) Yes (2) *No

9/7/83	Seasame Street Child Safety Project: Approve Proposal; Review Funding Options	Yes	Yes	Yes	Yes	Yes
9/15/83 (Ballot)	Son and Sand Import, Ltd.: Issuance of Subpoenas by Complaint Counsel	Yes	Yes	Yes	Yes	Yes
9/15/83 (Ballot)	FOIA Appeals of Denials: Affirm Withholdings (2)	Yes	Yes	Yes	Yes	Yes
9/15/83 (Ballot)	Honeywell, Inc.: Issuance of Subpoenas by Complaint Counsel	Yes	Yes	Yes	Yes	Yes
9/15/83 (Ballot)	Response to Litigation Questionnaire from House Subcommittee on Oversight and Investigations	Yes	Yes	Yes	Yes	No
9/15/83	Urea-Formaldehyde Foam Insulation: Options Related to Future Actions	*Yes	Not Present	Yes	*No (Written Vote)	*Yes
9/15/83	Children's Chemical Hazards: DEHP - Convene a Chronic Hazard Advisory Panel on Di(2-Ethyl-Hexyl) Phthalate	Yes	Yes	Yes	Yes	Yes
9/21/83	Mesh-Sided Cribs and Playpens: Issuance of an Administrative Complaint, CPSC Docket 83-4	Yes	Yes	Yes	Yes	*No
9/21/83	Enforcement Matter RS# 3319: Authorized to Seek Civil Penalty	Yes	Yes	Yes	Yes	Yes
9/28/83 (Ballot)	Unvented Gas-Fired Space Heaters: Approve Federal Register Notice Proposing Revocation	No	No	Yes	Yes	Yes
9/28/83 (Ballot)	Revised Draft of Sixth Semi-Annual Regulatory Agenda: Approve	Yes	Yes	Yes	Yes	Yes
9/28/83	Policy on Election of Vice Chairman: Continue the Current Practice of Rotating the Vice Chairman	Yes	No	Yes	No	Yes
10/5/83 (Ballot)	Toy Chests: Approve Federal Register Document Withdrawing Proposed Rule	Yes	No	Yes	No	Yes
10/5/83 (Ballot)	Cotton Dreams: Provisional Acceptance of Consent Order Agreement, CPSC Docket 84-C0001	Yes	Yes	Yes	Yes	Yes
10/19/83	UFFI Options: CHAP on Formaldehyde and to Initiate a Program to Address the Hazards Presented by UFFI	*Yes	*Yes	*Yes	*Yes	*Yes
10/20/83 (Ballot)	FOIA Appeals of Denials: Affirm Withholdings (2)	Yes	Yes	Yes	Yes	Yes
10/20/83 (Ballot)	FOIA Appeal of Denial (S307073): Affirm Withholding	Yes	Abstain	Yes	Yes	Yes
10/20/83	Export Policy: Request for Public Hearing on Request for Reconsideration of Decision Announced in Imperial Carpet Mills, Inc. Case (FFA)	Yes	Yes	Yes	Yes	Yes
10/20/83	Oral Contraceptives: PPPA Exemption Re-proposal for Public Comment	Yes	Yes	Yes	Yes	Yes
10/20/83	Metal Chimneys: Options: 1) To Establish a Research Project to Investigate the Nature and Extent of Both the Structural, and Installation and Maintenance Problems; 2) To Issue a Strong Safety Alert/Press Release 3) To Issue an Advance Notice of Proposed Rulemaking	 Yes Yes No	 Yes Yes Yes	 Yes Yes Yes	 Yes Yes No	 Yes Yes No
10/20/83	Voluntary Standards Status Reports: Baby Walkers and Baby Gates/Enclosures: Other Children's Products - Following Discussion Commission Voted on Issuing a Press Release to Give Warning and Comparative Injury Data Concerning Expandable Gates in Relation to Other Type Gates	Yes	Yes	Yes	Not Present	Yes
11/2/83 (Ballot)	Coal and Wood Burning Stoves: Issuance of Requirements that Manufacturers Submit Copies of Labels and Instructions That Are Furnished with These Appliances to the Commission	Yes	Yes	Yes	Yes	Yes
11/2/83 (Ballot)	CPSC Comments on Recommendation of the Administrative Conference of the United States to Amend the Government in the Sunshine Act	Yes	No	Yes	Yes	No
11/2/83 (Ballot)	FOIA Appeal of Denial: Affirm Withholding	Yes	Yes	Yes	Yes	Yes
11/2/83	FOIA Appeals of Denials (S306246); (S103094): Affirm Withholdings (2)	Yes	Abstain	Yes	Yes	Yes
			(Left CPSC) Armstrong			
12/9/83	Allergic Sensitization: To Establish a Technical Advisory Panel	Yes	Not Voting	Yes	Yes	Yes
12/9/83	FOIA Appeal of Denial: Affirm Withholding	Yes	Not Voting	Yes	Yes	Yes
12/14/83 (Ballot)	Janex Corporation, CPSC Docket 83-3: Acceptance of Consent Agreement and Issuance of Commission Order	Yes	Yes(Sloan)	Yes	Yes	Yes
12/14/83 (Ballot)	Honeywell, Inc., CPSC Docket 83-2: Issuance of Subpoenas by Complaint Counsel	Yes	Yes(Sloan)	Yes	Yes	Yes
12/14/83 (Ballot)	Flammability of Clothing Textiles: Reopening of Comment Period for Proposed Amendment to Guaranty Testing Rules	Yes	Not at CPSC	Yes	Yes	Yes
12/14/83 (Ballot)	FOIA Appeal of Denial: Affirm Withholding	Yes	Not at CPSC	Yes	Yes	Yes
12/14/83 (Ballot)	Strong Sensitizers: Proposed Revocation of Regulatory Definition	Yes	Abstain	Yes	Yes	Yes

12/14/83 (Ballot)	Privacy Act Notice: Credit Reporting Agencies	Yes	Abstain	Yes	Yes	Yes
12/14/83	Section 6(b), CPSA: Final Rule	*Yes	Not Voting	*Yes	*Yes	*No
12/14/83	Chronic Hazards Advisory Panel on DEHP: Approve Federal Register Notice Inviting Member Recommendations	Yes	Not voting	Yes	Yes	Yes
12/14/83	Nitrosamines in Pacifiers: Draft Statement of Enforcement Policy	*Yes	Not voting	*Yes	*Yes	*No
12/15/83	NEISS Data: Policy for Dissemination	Yes	Not voting	Yes	No	Yes
12/15/83	Crib Hardware: Proposed 30(d) Rule	Yes	Not voting	Yes	Yes	*No
1/5/84 (Ballot)	Technical Amendment to PPPA Regulations: Amendment to Eliminate References to Economic Poisons	Yes	Yes	Yes	Yes	Yes
1/5/84 (Ballot)	Technical Amendments to Crib Regulations, Clarifying Effective Dates of Entrapment Amendments	Yes	Yes	Yes	Yes	Yes
1/5/84 (Ballot)	Federal Register Notice Adding to CPSC's Rules of Agency Organization a Listing of OMB Control Numbers for Rules Containing Information Collection Requirements	Yes	Yes	Yes	Yes	Yes
1/5/84 (Ballot)	FOIA Appeals of Denials: Affirm Withholdings (2)	Yes	Yes	Yes	Yes	Yes
1/5/84 (Ballot)	Mattress Flammability Standard: Proposal of Amendments Removing Existing Requirements for Production Testing, to Allow Material Substitutions and Various Other Changes	Yes	Yes	Yes	Yes	Yes
1/5/84	Policy on Applicability of Section 6(b) to Consumer Complaints Where FOIA Request is Generic and Where Brand Specific	Yes	Yes on generic Abstain re:brand	Yes	Yes	Yes
1/11/84	Children's Sleepwear Labeling Requirements: Final Amendment Permitting Precautionary Care Instructions on Reverse Side of Label	Yes	Yes	Yes	Yes	Yes
1/11/84	Expandable Enclosures: Final 30(d) Rule Transferring Regulation from FHSA to CPSA	Yes	Yes	*No	Yes	Yes
1/18/84 (Ballot)	Final Procedural Regulations Amendments to Conform with Statutory Changes	Yes	Abstain	Yes	Yes	Yes
1/18/84 (Ballot)	Final Report of Toxicological Advisory Board: Approval of Federal Register Notice Announcing Availability and Seeking Comments on the Report	Yes	Abstain	Yes	Yes	Yes
1/18/84 (Ballot)	UFFI Ban: Federal Register Notice to Remove from Code of Federal Regulations Pursuant to Court Decision	Yes	Yes	Yes	Yes	Yes
1/13/84	Regulations for the Benefit of Handicapped Persons: Proposal, Enforcing Section 504 of Rehabilitation Act of 1973	Yes	Yes	Yes	Yes	Yes
1/18/84	Squeeze Toys: Final 30(d) Rule Transferring Regulation from FHSA to CPSA	Yes	Yes	*No	Yes	Yes
1/18/84	Bassinets: Proposed 30(d) Rule Transferring Regulation from FHSA to CPSA	Yes	Yes	Yes	Yes	Yes
1/18/84	Flammable Fabrics Act Export Policy: Reaffirm Policy Set Forth In the Matter of Imperial Carpet Mills, Inc., July 6, 1983	*Yes	*Yes	*Yes	*Yes	*No
1/25/84 (Ballot)	FOIA Request for OGC Memorandum on Disclosure of Information from Unverified and Uncorroborated Consumer Product Complaints: Denial	Yes	Not Voting	Yes	Yes	No
1/25/84 (Ballot)	FOIA Appeal of Denial: Affirm Withholding	Yes	Yes	Yes	Yes	Yes
1/25/84 (Ballot)	Rule Review: Approval of Federal Register Notice Soliciting Comment on 8 Rules Issued Under the FFA	Yes	Yes	Yes	Yes	Not voting
2/15/84 (Ballot)	S. Schwab Co., Inc.: Acceptance of $25,000 Settlement, CPSC Docket 81-4	Yes	Abstain	Yes	Yes	Yes
2/15/84 (Ballot)	Edgewood Chenille Co., Inc., CPSC Docket 82-4: Approval of Decision and Order Dismissing Matter	Yes	Yes	Yes	Yes	Not voting
2/15/84 (Ballot)	Diphenhydramine: Approval of Federal Register (1) Issuing Final Regulation Requiring Child-Resistant Packaging, and (2)Proposal for Additional Dose Coverage	Yes	Yes	Yes	Yes	Left CPSC
2/15/84 (Ballot)	Export Policy Under CPSA and FHSA: Notice of Meeting of Commission to Discuss Export Policy Issues	Yes	Yes	Yes	Yes	
2/15/84 (Ballot)	Rule Review: Approval of Federal Register Notice Soliciting Comment on 9 Rules Issued Under FHSA	Yes	Yes	Yes	Yes	
2/2/84 (Ballot)	FOIA Appeals of Denials: Affirm Withholdings (2)	Yes	Yes	Yes	Yes	

DATE	DECISION	Steorts	Armstrong	Scanlon	Statler	Vacancy
2/22/84 (Ballot)	Chronic Hazard Advisory Panel on Formaldehyde: Approval of Federal Register Notice Asking for Nominations	Yes	Yes	Yes	Yes	
2/22/84 (Ballot)	Chlorofluorocarbon Propellants: Revocation of Reporting Requirements	Yes	Yes	Yes	Yes	

2/22/84 (Ballot)	Architectural Glazing Standard Exemption of Wired Glass Used in Fire Doors: Removal of Exemption Termination Date	Yes	Yes	Yes	Yes
2/22/84	Conjugated Estrogens and Progestins: Granting Petition to Exempt from Special Packaging Requirements of PPPA, PP 83-1	Yes	Yes	Yes	Yes
2/28/84 (Ballot)	FOIA Appeal of Denial: Affirm Withholding	Yes	Yes	Yes	Yes
2/29/84 (Ballot)	Approval of Request of Wood Heating Alliance to Report to the Commission on Its Progress on Metal Chimneys	Yes	Yes	Yes	No
2/29/84 (Ballot)	Power Lawn Mower Standard: Denial of Lewis Ely Petition for Exemption from Standard, CP 83-5	Yes	Yes	Yes	Yes
2/29/84 (Ballot)	Physician's Samples: Approve Federal Register Notice to Withdraw Proposal to Require Special Packaging	Yes	Abstain	Yes	Yes
2/29/84 (Ballot)	Export Policy Under CPSA and FHSA: Federal Register Notice Announcing Public Hearing	Yes	Yes	Yes	Yes
2/29/84 (Ballot)	Unlabeled Containers Exemption Under FHSA: Proposed Revocation	Yes	Yes	Yes	Yes
2/29/84 (Ballot)	Expandable Enclosures: Approval of Federal Register Notice to Issue Final 30(d) Rule Transferring Regulation from FHSA to CPSA	Yes	Yes	Not voting on FR vote No on rule	Yes
2/29/84	Chronic Hazard Advisory Panel on Nitrosamines: Whether to Convene a CHAP (Tie Vote - No Action)	Yes	No	No	Yes
3/7/84 (Ballot)	FOIA Appeal of Denial: Affirm Withholding	Yes	Yes	Yes	Yes
3/7/84 (Ballot)	Children's Sleepwear Flammability Standard: Final Statements of Enforcement Policy	Yes	Yes	Yes	Yes
3/7/84 (Ballot)	Administrative Claims Under Federal Tort Claims Act for Damages Allegedly Arising from CPSC UFFI Ban: Denial	Yes	Yes	Yes	Yes
3/15/84 (Ballot)	Revised Aluminum Wiring Booklet and Staff Technical Report: Authorization for Copying	Yes	No	Yes	Yes
3/15/84 (Ballot)	Semi-Annual Regulatory Agenda: Approval of Federal Register Notice Publishing CPSC's Semi-Annual Regulatory Agenda	Yes	Yes	Yes	Yes
3/15/84 (Ballot)	Squeeze Toys: Approval of Federal Register Issuing Final 30(d) Rule Transferring Regulation from FHSA to CPSA	Yes	Yes	No	Yes
3/15/84 (Ballot)	Bassinets: Approval of Federal Register Proposing 30(d) Rule Transferring Regulation from FHSA to CPSA	Yes	Yes	Yes	Yes
3/20/84	Enterprise Amusement Ride: Acceptance of Interim Corrective Action Plan	*No	Yes	Yes	Yes
3/21/84	Section 15, CPSA, Policy Statement: Approval of Federal Register Document	Yes	Yes	Yes	Yes
3/28/84 (Ballot)	Administrative Claim Under Federal Tort Claims Act for Damages Allegedly Arising from CPSC UFFI Ban: Denial	Yes	Yes	Yes	Yes
3/28/84 (Ballot)	FOIA Appeal of Denial: Affirm Withholding	Yes	Yes	Yes	Yes
3/28/84 (Ballot)	CPSC Comments on California Smoke Detector Bill	Yes	Yes	Yes	Yes
3/28/84 (Ballot)	Upholstered Furniture: Denial of Petition FP 83-1 for Issuance of Flammability Standard for Welt Cord Used in Upholstered Furniture	Yes	Yes	*Yes	Yes
3/28/84 (Ballot)	Amendment of Regulations for Classification of FHSA Flashpoint Temperatures: Proposal	Yes	Yes	Yes	Yes
3/28/84 (Ballot)	Oral Contraceptives: Proposal to Exempt from Child-Resistant Packaging Under the PPPA	Yes	Yes	Yes	Yes
3/28/84 (Ballot)	Approval of Presentation by National Kerosene Heater Association and Underwriters Laboratories at Commission Meeting	Yes	Yes	Yes	Yes
3/28/84 (Ballot)	Approval of Presentation by State and Local Officials at Commission Meeting	Yes	Yes	Yes	Yes
3/28/84	Crib Hardware: Approval of Federal Register Issuing Final 30(d) Rule Transferring Regulation from FHSA to CPSA	*Yes	*Yes	*No	*Yes
4/11/84	Squeeze Toys Options: Whether to Publish an ANPR to Address Impaction Type Choking Hazards (Tie Vote on Various Motions - No Action)	Yes	No	No	Yes
4/11/84	Comments on HUD Proposed Formaldehyde Standard for Pressed Wood: Comment on Staff Level, Not Official Commission Statement	Yes	Yes	Yes	Abstain (Separate Letter)
4/12/84 (Ballot)	FOIA Appeal of Denial: Affirm Withholding	Yes	Yes	Yes	Yes
4/12/84 (Ballot)	Request for Administrative Hearing, ID 83-12: Denial	Yes	Yes	Yes	Yes
4/12/84 (Ballot)	Statement of General Policy on Personnel Issue Involving Non-Career SES Employees	*No	Yes	Yes	Yes
4/12/84 (Ballot)	Architectural Glazing Standard Certificates of Compliance: Approval of Federal Register Consolidating Current Guidance of Issuance of Certificates of Compliance	Yes	Yes	Yes	Yes
4/12/84 (Ballot)	Revision to Section 6(b)(6) Directive on Media Contacts	*No	Yes	Yes	Yes

4/12/84 (Ballot)	Honeywell, Inc., CPSC Docket 83-2: Approval of Issuance of Subpoena by Complaint Counsel, and by Respondent	Yes	Yes	Yes	Yes
4/19/84 (Ballot)	Honeywell, Inc., CPSC Docket 84-1: Authorization of Issuance of Complaint re: Gas Controls, Model V5130	Yes	Yes	Yes	Yes
4/19/84 (Ballot)	Sherwin Rubin Request to Make Presentation at Commission Meeting on Smoke Detectors: Denial	Yes	Yes	No	Yes
5/2/84 (Ballot)	FOIA Appeal of Partial Denial of Briefing Package on Nitrosamines: Affirm Withholding OGC Memo; Tie Vote on Health Sciences Portion	Yes on both	Yes on both	Yes on OGC No on HS	Yes on OGC No on HS
5/2/84 (Ballot)	CPSC Comment on Administrative Conference recommendations on Product Recalls	Yes	Yes	No	Yes
5/2/84 (Ballot)	Honeywell, Inc., CPSC Docket 83-2: Approval to Issue Subpoenas by Complaint Counsel	Yes	Yes	Yes	Yes
5/2/84 (Ballot)	Honeywell, Inc., CPSC Docket 83-2: Approval to Issue Subpoena by Respondent	Yes	No (limits)	Yes	Yes
5/2/84	Robertshaw Controls Co., Inc.: Approval of Proposed Settlement in Civil Action 83-0765R, Including Corrective Action and Penalty of $90,000	Yes	Yes	Yes	Yes on Corrective Action; No on Civil penalty*
5/9/84 (Ballot)	Acceptance of additional public notice effort proposed by Sears/Roper re: Roto-tiller Recall	Yes	Yes	Yes	Yes
5/9/84 (Ballot)	Approval of Federal Register Notice Publishing Schedule of Commercial or Industrial Activities Per OMB Circular No. A-76	Yes	Yes	Yes	Yes
5/9/84 (Ballot)	Cellulose Insulation Labeling Rule: Final Amendment Concerning Proper Installation to Avoid Fire Hazards	Yes	Yes	Yes	Yes
5/9/84 (Ballot)	Conjugated Estrogens and Progestins: Approval of Federal Register Notice to Propose Exemption from Special Packaging	Yes	Yes	Yes	Yes
5/16/84	Export Policy Under CPSA and FHSA: Retain Existing Policy Prohibiting Export of Non-Complying Products Previously Distributed in Domestic Commerce	*Yes	*Yes	*No	*Yes
5/16/84	Voluntary Standards Policy: Draft Federal Register Notice on Possible CPSC Recognition of Voluntary Standards and Notice of Public Hearing and Request for Comments	Yes	Yes	Yes	Yes
5/17/84 (Ballot)	Bilt-Rite, et al, CPSC Docket 83-4: Approval of Issuance of Subpoenas by Complaint Counsel	Yes	Yes	Yes on 2; No on 1	Yes
5/23/84 (Ballot)	Strong Sensitizer: Final Revocation of Regulatory Definition	Yes	Yes	Yes	Yes
5/23/84 (Ballot)	Ford Manufacturing Co., Inc., CPSC Docket 82-2: Acceptance of Settlement Proposal	Yes	Yes	Yes	No
5/23/84 (Ballot)	Rule Review, FFA: Approval of Federal Register Notice to Reopen Comment Period	Yes	Yes	Yes	Yes
5/23/84 (Ballot)	FOIA Appeals of Denials: Affirm Withholdings (2)	Yes	Yes	Yes	Yes
5/23/84 (Ballot)	CPSC Response to Congressional Letter and Federal Register Notice on LD-50 Testing	Yes	Yes	Yes	Yes
5/23/84 (Ballot)	Request by Artists Equity to Address Commission at Meeting on Voluntary Standards Policy: Denial	Yes	Yes	No	Yes
5/23/84 (Ballot)	Room Odorizers: Denial of Petition HP 82-1 for Ban Under FHSA	Yes	Yes	Yes	Yes
5/23/84	Residential Swimming Pools/Spas Hazard Report: Direction to Staff for Issuance of Consumer Alert and Decision to not Spend Additional Resources on Further Data Collection	Yes	Yes	Not Present	Yes
5/30/84	Election of Vice Chairman, Saundra Brown Armstrong	Yes	Yes	Yes	Yes
5/30/84	CPSC Comments on S. 1935, Cigarette Safety Bill	Yes	Yes	Yes	No (Separate Letter)
6/6/84	FOIA Appeal of Partial Denials and of Separate Decision Not to Proceed with Search Without Assurance of Payment of Search/Copying Fees: Affirm Withholdings, and Dismiss Appeal on Separate Decision	Yes	Yes	Yes	Yes
6/6/84	FOIA Appeal of Denial of Information on Section 15 Investigation: (Tie Vote - Initial Withholding Stands)	Affirm	Reverse	Affirm	Reverse
6/13/84 (Ballot)	Robertshaw Controls Co., Unitrol A-1 Series Gas Water Heater LP-Type Control Valves: Acceptance of Corrective Action Plan and Not Seek Civil Penalty	Yes	Yes	Yes	Yes
6/13/84 (Ballot)	Response to House Committee on Science and Technology Questions re: H.R. 4192, Risk Assessment Research and Demonstration Act of 1983	Yes	Yes	Yes	Yes
6/13/84 (Ballot)	FY 1986 Priorities: Federal Register Notice Announcing Public Hearing	Yes	Yes	Yes	Yes
6/13/84 (Ballot)	FOIA Appeal of Partial Denial: Affirm Withholding	Yes	Yes	Yes	Yes

						Dawson
6/13/84 (Ballot)	Bilt-Rite Juvenile Products, Inc., et al, CPSC Docket 83-4: Approval of Issuance of Subpoenas by Respondents	Yes	Yes	Yes	Yes	
6/13/84	FOIA Regulations, Proposed Amendments and Organziation Changes: Tie Votes on Several Motions, Including Reduction of Fee Waiver - No Action	Yes on Fee Waiver; No on Others	No on Fee Waiver; Yes on Others	Yes on Fee Waiver; No on Others	No on Fee Waiver; Yes on Others	
6/21/84 (Ballot)	Voluntary Standards Policy: Approval of Federal Register Notice Seeking Public Comments on Proposals re: CPSC Involvement and Announcing Public Hearing	Yes	Yes	Yes	Yes	
6/21/84 (Ballot)	Toy Age Labeling: Federal Register Notice Announcing Public Meeting with Manufacturers and Importers of Toys	Yes	Yes	Yes	Yes	
6/21/84	NSPI Safety Booklets: 1) Approval for Use of "Developed in Cooperation with CPSC" Statement on Booklets; 2) Tie Vote on Additional Statement Encouraging Users to Read and Follow Safety Information in Booklets	Yes (1) Yes (2)	*No (1) *No (2)	Yes (1) Yes (2)	Yes (1) No (2)	
6/21/84	Power Lawn Mowers Certification Rule: Amendment Clarifying Labeling for Containers and Promotional Material	Yes	No	Yes	Yes	
7/11/84 (Ballot)	FOIA Appeal of Denial of Consumer Complaint: Affirm Withholding	Yes	No	Yes	Yes	Vote Prior to joining CPSC
7/11/84 (Ballot)	CPSC Report to Congress on "The Effects on Consumers of Amendment to Safety Standard for Walk-Behind Power Lawn Mowers"	Yes	Yes	Yes	Yes	Vote Prior to joining CPSC
7/11/84 (Ballot)	Chlorofluorocarbon Propellants: Approval of Federal Register to Issue Final Rule Revoking Reporting Requirements	Yes	Yes	Yes	Yes	
7/11/84 (Ballot)	FOIA Appeal of Denial: Affirm Withholding	Yes	Yes	Yes	Yes	Vote Prior to Joining CPSC
7/11/84 (Ballot)	FOIA Appeal of Denial of Portions of Health Sciences Memorandum on Nitrosamines: Reverse Withholding and Disclose in Entirety	Yes	No in part	Yes	Yes	Vote Prior to joining CPSC

* - Opinion Filed

DATE	DECISION	Steorts	Armstrong	Dawson	Scanlon	Statler
7/16/84	FY 1985 Operating Plan Overall (Various Separate Decisions)	Yes	Yes	Yes	Yes	*No
7/24/84 (Ballot)	Expandable Baby Enclosures: Issuance of Administrative Complaint Against 6 Manufacturers, CPSC Docket 84-2	Yes	Yes	Vote Prior to joining CPSC	No	Yes
8/1/84 (Ballot)	FOIA Appeal of Denial: Affirm Withholding	Yes	Yes	Abstain	Yes	Yes
8/1/84 (Ballot)	Administrative Claims Under Federal Tort Claims Act on Damages Allegedly Arising from CPSC UFFI Ban: Denial	Yes	Yes	Abstain	Yes	Yes
8/1/84 (Ballot)	1977 Proposed Safety Standard for Power Lawn Mowers: Withdrawal of Portions Not Included in 1979 Standard	Yes	Yes	Abstain	Yes	Yes
8/1/84 (Ballot)	Bassinets: Approval of Federal Register Issuing Final 30(d) Rule Transferring Regulation from FHSA to CPSA	Yes	Yes	Abstain	Yes	Yes
8/1/84 (Ballot)	Fisher Price, Splash and Stack Bluebird Toy: Approval of Corrective Action Plan	Yes	Yes	Yes	Yes	Yes
8/1/84 (Ballot)	Procter & Gamble Request for Retraction of Certain Statements in CPSC 1982 Special Report on Infant Products: Approval of Revisions to Report and Explanatory Letter to Known Recipients of Report	Yes	Yes	Not voting	Yes	Yes
8/8/84	Technical Advisory Panel on Allergic Sensitization: Membership Selection	Yes	Yes	Yes	Yes	Yes
8/8/84 (Ballot)	FOIA Lawsuit Brought By Chemical Manufacturers of America: Disclose Withheld Documents to Settle Suit	Yes	Yes	Abstain	Yes	Yes
8/8/84 (Ballot)	FOIA Appeal of Denial of Consumer Complaints: Affirm Withholding	Yes	Yes in part No in part	Not voting	Yes	Yes
8/8/84 (Ballot)	Diphenhydramine: Approval of Federal Register Notice to Require Child Resistant Packaging for Additional Dose Coverage than Previously Required	Yes	Yes	Yes	Yes	Yes
8/8/84 (Ballot)	Bilt-Rite Juvenile Products, Inc., et al, CPSC Docket 83-4: Approval of Issuance of Subpoena by Complaint Counsel	Yes	Yes	Abstain	Yes	Yes
8/8/84 (Ballot)	Beaird-Poulen Weed Eater: Provisional Acceptance of Civil Penalty Settlement Agreement with Emerson Electric Co., CPSC Docket 84-C0002	Yes	Yes	Not voting	Yes	Yes
8/9/84	FY 1986 Priorities: Selection of 5 Priority Projects	Yes	Yes	Yes	Yes	Yes
8/14/84	Unvented Gas-Fired Space Heaters Standard: Approve Final Revocation	*No	*No	Yes	*Yes	*Yes
8/14/84	Mattress Standard Amendments: Approval of Final Rule to Reduce Testing and Recordkeeping Burdens	Yes	Yes	Yes	Yes	Yes
8/16/84	Export Policy Under CPSA and FHSA: Approval of Codification of Export Policy as Final Statement of Policy	Yes	Yes	Abstain	*No	Yes
8/16/84	Export Policy Under CPSA and FHSA: Approval of Internal Guidelines in Evaluating Requests to Export	Yes	Yes	Abstain	No	Yes

8/16/84	Export Policy Under FFA: Approval of *Federal Register* Notice to Revoke Statement of Policy Issued Prior to July 7, 1983, Memorandum Order and Decision in the *Matter of Imperial Carpet Mills, Inc.*	Yes	Yes	Yes	Yes	Yes
8/17/84 (Ballot)	Revisions to Financial Interest Reporting Regulations in CPSC Employee Standards of Conduct	Yes	Yes	Yes	Yes	Yes
8/17/84 (Ballot)	Unlabeled Containers Exemption Under FHSA: Approval of *Federal Register* Notice Announcing Revocation of Exemption	Yes	Yes	Yes	Yes	Yes
8/17/84 (Ballot)	Bilt-Rite Juvenile Products, Inc., et al, CPSC Docket 83-4: Approval of Issuance of Subpoenas by Respondents	Yes	Yes	Vote Prior to joining CPSC	Yes	Yes
9/7/84 (Ballot)	National Institute of Building Sciences' Request for CPSC Co-Sponsorship of Conference: Decision to Not Co-Sponsor	Yes	Yes	Yes	No	No
9/7/84 (Ballot)	FOIA Appeal of Denial: Affirm Withholding	Yes	Yes	Yes	Yes	Yes
9/7/84 (Ballot)	Procedural Policy on Discussion at Open Meeting of Information in Restricted Memoranda: Approval of OGC Memorandum to Employees	Yes	Yes	Abstain	Yes	Yes
9/7/84 (Ballot)	Letter Commenting on TV Messages and Coloring Book on Electrical Safety Prepared by Alabama Power Co.	Abstain	Yes	Yes	Yes	Yes
9/7/84 (Ballot)	Fireworks Investigation: Authorization of Issuance of Subpoenas and for OGC to Conduct Non-Public Investigational Hearing to be Governed by Regulations on Investigations, Inspections and Inquiries Under the CPSA	Yes	Yes	Yes	Yes	Yes
9/7/84 (Ballot)	Bilt-Rite Juvenile Products, Inc., et al, CPSC Docket 83-4: Approval of Issuance of Subpoenas by Respondents	Yes	Yes	Yes	Yes	Yes
9/14/84	FY 1986 Budget Request Level	Yes	No	No	Yes	Yes
9/20/84 (Ballot)	FOIA Appeal of Denial of Intra-Agency Memorandum: Affirm Withholding	Yes	Yes	Yes	No	Yes
9/20/84 (Ballot)	FOIA Appeals of Denials of Consumer Complaint: Affirm Withholdings (2)	Yes	Yes	Yes	Yes	Yes
9/20/84 (Ballot)	Semi-Annual Regulatory Agenda: Approval of FR Notice Publishing CPSC Semi-Annual Regulatory Agenda	Yes	Yes	Yes	Yes	Yes
9/20/84	EPA's Advance Notice of Proposed Rulemaking on Formaldehyde: Staff Directed to Share Information with EPA But Not As Formal Comment on Rulemaking	Yes	Yes	Yes	Yes	Not Present
9/28/84 (Ballot)	Public Meeting with Manufacturers of Saw Chains and Chain Saws: Approval of *Federal Register* Notice	Yes	Yes	Yes	Yes	Yes
10/3/84	Statement of Policy on Granting of Quality Step Increases, CPSC Directive 1024.1	Deferral	Yes	Yes	Yes	Yes
10/3/84	FY 1986 Budget Request Overall: Amended Level	Yes	Yes	*Yes	*No	Yes
10/17/84 (Ballot)	Mattress Flammability Standard Amendments: Approval of Revised *Federal Register* Notice Issuing Final Amendments	Yes	Yes	Yes	Yes	Yes
10/17/84 (Ballot)	Petition CP 83-3 Requesting Labeling Rule for Toilets and Toilet Seats: Denial	Yes	Yes	Yes	Yes	Yes
10/17/84 (Ballot)	Export Policy Under CPSA and FHSA, Codification Document: Approval of *Federal Register* Notice	Yes	Yes	Abstain	No	Yes
10/17/84 (Ballot)	Fisher Price "Play Gym" Crib Toy: Approval of Corrective Action Plan and Press Release	Yes	Yes	Yes	Yes	Yes
10/17/84 (Ballot)	All-Terrain Vehicles: Approval of *Federal Register* Notice Announcing Meeting with Manufacturers and Importers	Yes	Yes	Yes	Yes	Yes
10/31/84	DEHP CHAP: Selection of Members	Yes	Yes	Yes	Yes	Yes
11/8/84 (Ballot)	Court Decisions in *U.S. v. Advance Machine Company*, C.A. No. 3-82-152: Decision to Not Seek Appeal	Yes	Yes	Yes	Yes	Yes
11/8/84 (Ballot)	Chinese Pajamas in Children's Sizes, and Futons (Flexible Mats Used for Sleeping): Approval of Enforcement Advisory Letters re: Applicability of Flammability Standards	Yes	Yes	Yes	Yes	Yes
11/8/84 (Ballot)	Oral Contraceptives: Approval of *Federal Register* Notice on Final Exemption from Special Packaging Requirements	Yes	Yes	Yes	Yes	Yes
11/9/84 (Ballot)	First Aid Labeling: Approval of Outside Participation by Laura Letson at Commission Briefing	No	Yes	Yes	Yes	Yes
11/15/84	Toy Chests: Possible Section 15 and Other Actions: Directed Staff to Seek Prospective Action	Not Voting	Yes	Yes	Yes	No
11/15/84	Imperial Carpet Mills, Inc., CPSC Docket 80-2: Acceptance of Consent Agreement and Order	Yes in part	No	Yes	Yes	Yes in part
12/20/84 (Ballot)	Gee Kay Fabrics, Inc., CPSC Docket 85-C0001: Accept Consent Agreement	Yes	Yes	Yes	Yes	Yes
12/20/84 (Ballot)	Clothing Textiles Flammability Standard: Approve Final Amendments of 16 CFR 1610.37	Yes	No	Yes	Yes	Yes
12/20/84 (Ballot)	Unvented Gas-Fired Space Heater Standard Revocation: Approve Final Revocation *Federal Register* Notice	No	*No	Yes	Yes	Yes
12/20/84 (Ballot)	Conjugated Estrogens and Norethindrone Acetate: Final Exemption from PPPA Special Packaging Requirements	Yes	Yes	Yes	Yes	Yes
12/20/84 (Ballot)	FOIA Appeal of Denial: Affirm Withholding	Yes	Yes	Yes	Yes	Yes
12/20/84 (Ballot)	Hazardous Substances Labeling re: Prominence, Placement and Conspicuousness: Approve Final Amendment	Yes	Yes (No on preamble section)	Yes	Yes	Yes
12/20/84 (Ballot)	American Textile Manufacturers Institute TV Spot on Smoke Detectors: Approve Staff Working to Develop Spot Including Statement " Developed in Cooperation with CPSC"	Yes	No	Yes	Yes	Yes

Summary Record of Commission Actions/Votes

1/85 -

Chairman Terrence Scanlon	(TS)
Commissioner Saundra Brown Armstrong	(SBA)
Commissioner Carol G. Dawson	(CGD)
Commissioner Stuart M. Statler	(SMS)

Note: This summary record of Commission actions/votes fulfills the indexing requirements of subsection (a)(2) of the Freedom of Information Act. It is intended as a reference supplement to the official Minutes/Records of Commission Actions, which are available in the Office of the Secretary. Matters that are not public information at this time; e.g., certain enforcement actions, are not included in this summary. Some of the items concerning FOIA appeals, where the votes were unanimous, are combined in the interest of space; in these cases, the number of appeals is noted in parentheses.

Revised July 1, 1985

* Opinion Filed

DATE	DECISION	TS	SBA	CGD	SMS	Vacancy
1/7/85	FY 86 Budget Request Overall, Amended Level (various separate decisions)	Yes	Yes	Yes	*Yes	
1/9/85	Employee Standards of Conduct: proposed amendments re: outside activities (no decision - tie vote)	Yes	Yes	No	No	
1/9/85	Baby Gates: (1) request cease production/distribution by 1/31/85 and affirm voluntary actions by firms, (2) staff to draft FR statement of enforcement policy	1) Yes 2) Yes	1) Yes* 2) Yes	1) Yes 2) Yes	*1) No as to 1/31/85 2) Yes	
1/16/85	Voluntary Standards Policy: withdraw proposed amendment; staff to review alternative approaches	*Yes	*Yes	*Yes	*Yes	
1/23/85 (Ballot)	Section 15 Enforcement Policy: provide opportunity for written comment	Yes	Yes (also oral comment)	Yes	Yes	Yes (Steorts)
1/23/85 (Ballot)	Honeywell, Inc., CPSC Docket Nos. 85-C0002, 84-1 and 83-2: accept Settlement Agreement and Order	Yes	Yes	Yes	Yes	Yes (Steorts)
1/23/85 (Ballot)	Unvented Gas-Fired Space Heater Standard, Applications for Exemption from Preemption: approve letter to applicants re: no further consideration since standard revoked	Yes	No	Yes	Yes	
1/30/85	DEHP CHAP: approve 3 additional questions for CHAP to consider	Yes	Yes	Yes	Yes	
1/30/85 (Ballot)	CPSC Comments to Office of Science and Technology on "Chemical Carcinogens: A Review of the Science and its Associated Principles (November 10, 1984)"	Yes	Yes	Yes	Yes	
2/6/85 (Ballot)	Rotary Lawn Mower Blades Handguards, Petition CP 84-1: deny petition	Yes	Yes	Yes	Yes	
2/6/85 (Ballot)	Toxicological Advisory Board Report: approve certain recommendations for staff implementation	Yes	Yes	Yes	Yes	
2/20/85 (Ballot)	Flammability Standards, 16 CFR Part 1610 and 1611: approve final amendments	Yes	Yes	Yes	Yes	
2/20/85 (Ballot)	Section 15 Enforcement Policy: approve extension of written comment period	Yes	Yes	Yes	Yes	
2/20/85 (Ballot)	FOIA Regulation, 16 CFR Part 1015.7: approve revision to provide that FOIA appeals will be decided by General Counsel	Yes	Yes	Yes	Yes	
2/20/85 (Ballot)	FOIA Appeals of Denials: affirm withholdings (2)	Yes	Yes	Yes	Yes	
3/13/85 (Ballot)	FOIA Appeal of E.V.E. Joy (FOIA S308273): affirm withholding	Yes	Yes	Yes	Yes	
3/13/85 (Ballot)	Appeal of Partial Denial of Request for Records, (FOIA S405106): affirm withholding (various FOIA exemptions)	Yes	Yes	Yes	Yes	
3/19/85	In the Matter of Bilt-Rite Juvenile Products Inc., et. al., CPSC Docket No. 83-4: accept settlement agreement and issue order	Yes	Yes	Yes	*Yes	
3/20/85 (Ballot)	Corrective Action Plan and Civil Penalty - Hamilton Beach Division of Scovill, Inc. - Coffee Maker, Model 784: (1) approve corrective action plan; (2) approve provisional acceptance of a civil penalty agreement	1)Yes 2)Yes	1)Yes 2)No	1)Yes 2)Yes	1)Yes 2)Yes	
3/20/85 (Ballot)	Petition HP 83-2 to Ban Potassium Dichromate Products for Use in Residential Humidifiers: deny petition	Yes	Yes	Yes	Yes	
3/20/85 (Ballot)	Request to File Brief as Amicus Curiae in Swenson v. Emerson Electric Co., et. al., No. C8-84-188 (Minnesota Supreme Court) (Vote 2-2, No decision)	No	Yes	No	Yes	
3/20/85 (Ballot)	ID 81-96 John Deere, Lawn and Garden Tractors: approve closing	Yes	Yes	Yes	Yes	

4/3/85 (Ballot)	ID 85-05, Miracle Recreation Equipment Co., "Flying Wheels" Swing (Class A): approve voluntary corrective action plan and the press release, as revised	Yes	Yes	Yes	Yes
4/3/85	Three-Wheeled All-Terrain Vehciles: adopted 7-point action plan set forth in "Commission Instructions to Staff on ATV's, April 3, 1985"	Yes	Yes	Yes	Yes
4/10/85	Mid-Year Review: (1) approve the "trade-out" resources identified by staff to undertake the work on ATV's; (2) direct staff to set aside $50,000-$75,000 for CPSC Management Review; (3) approve list of projects to be funded if additional monies available	1)Yes 2)Yes 3)Yes	1)Yes 2)Yes 3)No	1)Yes 2)Yes 3)Yes	1)Yes 2)Yes 3)Yes
4/10/85 (Ballot)	Semi-Annual Regulatory Agenda: approve Regulatory Flexibility Agenda and Federal Register notice with specified changes	Yes	Yes	Yes	Yes
4/24/85	National Spa and Pool Institute Request Concerning Public Service Announcements: agree in principle to work with NSPI in development of public service announcements subject to a written understanding	Yes	No	Yes	Yes
5/8/85 (Ballot)	Withdrawal of Voluntary Standards Proposal: approve FR document to withdraw the June 1984 proposal to amend CPSC's regulations on voluntary standards activities	Yes	No	Yes	Yes
5/8/85 (Ballot)	Request from Fisons Corp. for Exemption from Special Packaging Requirements for sample packages of iron: deny request	Yes	Yes	Yes	Yes
5/15/85 (Ballot)	Petition PP 84-1 to Require Child-Resistant Packaging for Liquid Household Bleach: deny petition	Yes	Yes	Yes	Yes
5/22/85 (Ballot)	Public Hearing on FY 1987 Priorities, June 4, 1985: approve FR notice announcing public hearing	Yew	Yes	Yes	Yes
5/22/85 (Ballot)	Public Hearing on Hazards Associated with ATV's: approve FR notice announcing public hearing in Dallas, Texas	Yes	Yes	Yes	Yes
5/22/85	Election of Vice Chairman: Carol G. Dawson	Yes	Yes	Yes	Yes
6/4/85 (Ballot)	ATV's - Advance Notice of Proposed Rulemaking (ANPR): approved publication in Federal Register	Yes	Yes	*No	Yes
6/19/85 (Ballot)	Scripts for NSPI Public Service Andouncements re: diving accidents/child drownings: approved scripts with changes	Yes	Abstain (Voted No on project)	Yes	Yes
6/19/85 (Ballot)	Extension of Time for Submission of Report of CHAP for DEHP: granted extension of time until 9/30/85	Yes	Yes	Yes	Yes
6/19/85 (Ballot)	ID 85-13, 85-15 Crib Cuddle: conditionally approved corrective action plan and approve press release announcing recall	Yes	*No	Yes	Yes
6/19/85 (Ballot)	Petition CP 83-2 on Swimming Pool Covers: deny petition, approve letters to requesters, and direct staff to participate in voluntary standard development	Yes	*Yes (With changes in letters)	Yes	Yes
6/19/85 (Ballot)	Automobile-Related Petroleum Distillate Products: voted not to develop special packaging standard; staff continue to monitor injury data	Yes	Yes	Yes	Yes
6/26/85 (Ballot)	Special Packaging of Prescription Drugs re: ledocaine and GBH preparations: accepted recommendation to pursue voluntary standard packaging and labeling actions and to monitor ingestion data	Yes	Yes	Yes	Yes
6/26/85 (Ballot)	Request from National Council on Fireworks Safety for Co-sponsorship of Public Service Announcements; tie vote, 2-2, no decision	Yes	No	Yes	No
6/26/85 (Ballot)	Proposed Revision to CHAP Statute and Procedure re: (1) amending Section 28(b)(1) of the CPSA restricting membership on CHAP (tie vote, 2-2, no decision) and (2) changing procedure on submission of CHAP nominations (1-3, do not change)	1)No 2)No	1)No 2)No	1)Yes 2)No	1)Yes 2)Yes
7/17/85 (Ballot)	Miracle Recreation Equipment Company Section 15 Case: close case	Yes	Not Voting	Yes	Yes
7/17/85 (Ballot)	NSPI Public Service Announcements on Diving and Drowning: approved use of CPSC's name and logo	Yes	Not Voting	Yes	Yes
7/17/85 (Ballot)	Comments on H.R. 2518, Bill to Repeal Cellulose Insulation Biannual Reporting: approved letter as drafted	Yes	Not Voting	Yes	Yes
7/17/85 (Ballot)	All-Terrain Vehicles: approve Federal Register notice announcing public hearing in Concord, NH	Yes	Not Voting	Yes	Yes
7/17/85	Petitions AP 83-1, AP 83-2. granted Dr. Aronstein's request to meet with Commission and to waive 7-day advance notice (No decision on petitions at this meeting.)	Yes	Yes	Yes	No
7/23/85	Fiscal Year 1987 Priorities: approved six priority projects	Yes	Yes	Yes	Yes
7/31/85 (Ballot)	Voluntary Standards: approve Federal Register notice announcing public hearings in Los Angeles and Washington, D.C.	Yes	Yes	Yes	Abstain
7/31/85 (Ballot)	ID 80-112 Lear Siegler, Inc., MMC Gas-Fired Furnace: approve case closing	Yes	Not Voting	Yes	Yes
7/31/85 (Ballot)	In the Matter of Honeywell, CPSC Dockets Nos. 83-2 and 84-1: National LP Gas Association request to reopen proceedings; hold request in abeyance pending testing	Yes	Not Voting	Yes	Yes
8/7/85 (Ballot	All-Terrain Vehicles: approve extension of public comments on ANPR	Yes	Yes	Yes	Abstain
8/7/85	Chain Saws: terminate chain saw proceedings and approve Federal Register notice	Yes	Yes	Yes	Yes

Question 23. Do you believe the current budget request for FY 1986 is sufficient to carry out the agency's mandate?

Answer. Yes.

Question 24. Would you support or oppose further staffing cuts at the Consumer Product Safety Commission?

Answer. I would not support a reduction in staff and resources below what is necessary for the Commission to carry out its statutory responsibilities. However, there may be instances where it would be more cost effective to devote contract dollars instead of assigning in-house personnel to accomplish a given mission. Also a program may become obsolete as a result of successful remedial action taken by the Commission and certain personnel would no longer be needed.

Question 25. In your opinion, are state and local programs funded at an adequate level in the FY 1986 budget?

Answer No. I believe State and local programs warrant greater emphasis by the Commission.

Question 26. What is yours opinion of the policy prohibiting export of noncomplying products?

Answer. Consistent with Congressional intent expressed in the 1978 Amendments to the Flammable Fabrics Act, my preference would be for giving nations a 30-day notice of the proposed shipment and letting them decide whether or not they will accept the imports in question.

Question 27. Was there an increase in Section 15 reporting by industry in the last six months of 1984?

Answer. No. There were 64 reports received in the last six months of fiscal 1984 and a total of 128 reports for the year. However, during the first 6 months of fiscal 1985, 116 section 15 reports were filed and 45 more have been filed since then for a total of 161 for the first ten months of fiscal 1985.

Question 28. In your opinion, should the Consumer Product Safety Commission endorse or publicly acknowledge voluntary standards?

Answer. I support the concept of voluntary standards recognition in some form, but there are certain practical and legal questions attending endorsement or public acknowledgement that remain unresolved. The staff is currently reviewing the legal ramifications of Commission recognition of industry developed standards. The Commission has scheduled two public hearings this fall to solicit public comment on this issue, and I look forward to hearing the relevant testimony.

Question 29. Should a recall be employed if most or all firms in an industry have sold a product which contains a common defect?

Answer. As I explained in my reponse to question sixteen, it would depend on the particular circumstances of the case.

Question 30. Do you agree with a recent Heritage Foundation report which found that product liability lawsuits make the Consumer Product Safety Commission redundant?

Answer. I am not familiar with the details of that report. I would note, however, that although product liability lawsuits may be an effective method of compensating parties injured by dangerously defective products, a finding of liability may occur several years after the injury or may not be publicized in time to bring the hazard to the attention of other potential victims. The Commission plays an important preventive role not addressed in the product liability area because it often is able to identify a potentially hazardous product and notify consumers before they are harmed.

Question 31. Would you support a change in Section 6(b)?

Answer. Section 6(b), in my view, has worked effectively to protect a manufacturer's or a consumer product's good name by preventing the Commission from releasing specific information on a consumer product of a particular manufacturer without first making efforts to ascertain whether it is misleading or inaccurate. The statute reflects a Congressional understanding that the reputation of a manufacturer and its products is its most valuable asset. It is therefore reasonable that the government should make every effort to ascertain the accuracy of any information it releases that could have an adverse impact on a manufacturer or its products. Equally important, Section 6(b) does not hinder the Commission's ability to act quickly to notify consumers of potentially dangerous products in the marketplace. Under the present statute, once the Commission initiates adjudication or rulemaking proceedings to address a product hazard, it is free to disclose product information without respect to Section 6(b) safeguards. I support this balanced approach to disclosing information.

Question 32. The Senate has voted to establish a National Commission to investigate amusement park rides, and explore ways to address hazards associated with these rides. You have testified that the Consumer Product Safety Commission should not have jurisdiction over fixed-site amusement park rides. As Chairman of the Consumer Product Safety Commission, you will be a member of this Commission. Will you be able to carry out the mission of this Commission with an open mind?

Answer. Yes. The National Commission on Amusement Ride Safety will perform an important task in determining what hazards are associated with amusement rides. I would bring an objective and evenhanded approach to my participation should this investigative Commission be established.

Question 33. According to a CRS report, an age limit for all-terrain vehicles should be viewed as the most feasible solution to injuries and deaths associated with ATVs. Do you agree?

Answer. The Commission is still in the process of gathering data on the hazards posed by ATVs. At this stage, I do not have sufficient information from which to draw conclusions, and would not want to express an opinion which may constitute, or appear to constitute, prejudgment of matters that may be submitted to me in my quasi-judicial capacity as a Commissioner.

STATEMENT OF TERRENCE M. SCANLON

Mr. SCANLON. Thank you, Senator Kasten. It is a pleasure to appear before you again and I am honored and privileged to be before you now as the nominee of the President to be Chairman of the Consumer Product Safety Commission.

Beginning with my appointment as Commissioner in 1983, I have valued greatly the opportunity to discuss with the committee the shortcomings, the achievements, and the overall direction of the Commission. Since my recess appointment late last year by the President to be Chairman of the Commission, these meetings have been especially welcome. They have truly helped inform the decisionmaking process at the Commission, and the decisions that I have had to make during this important period in the Agency's existence.

Please accept my thanks for all your help and your cooperation. It is important that the Chairman of the CPSC develop and maintain a close and constructive relationship with this committee. I have earnestly sought to do just that during these past 8 months. With your approval and your help, and for the good of the people whom we all serve, I pledge to continue to build upon that relationship, and to improve it wherever I can.

I shall not dwell upon the details of my personal background. My credentials and qualifications are before you. Nor will I burden you in this statement with a detailed discussion of my experience at the Commission, which after more than 2½ years amounts to a substantial collection, although I would be pleased to respond to any questions that you may have.

Rather, I would like to summarize for you my thoughts on the status of the Commission today, and where, through the unique opportunity afforded a Chairman, I would hope to focus the attention of the Commission in the future.

My dual points of departure are the Commission's organic laws, as most recently amended in significant part by the Congress in 1981, and the administration's regulatory philosophy as embodied in a variety of executive branch directives and guidelines.

The Congress has empowered the Commission with a vast array of powers and authorities with which to carry out its mandate of protecting consumers from unreasonable risks of injury associated with consumer products. These powers and authorities, as I understand them, do not constitute in any way a license for the Commission to choose solutions to problems on the basis of whim, caprice or anything approaching personal predilection and nothing more.

The Commission's solutions must be carefully calibrated to the risks presented, with a full appreciation of the costs and benefits that attend virtually all of our decisionmaking. In instances where the facts have not yet been fully developed to afford the Commission an opportunity to make such a measured decision, as is the case right now with our investigation into the risks associated with all-terrain vehicles, no option should be foreclosed, and our judgments should be held in abeyance.

Beyond the fundamental requirement that we regulators match problems with appropriate solutions is the need to approach our work the way in which our lawmakers intended. Thus, superimposed upon the basic statutory framework of our product safety laws is the 1981 directive from Congress that the Commission work with consumers and industry to foster voluntary standards for product safety and that mandatory standards not be imposed unless and until the possibility of effective voluntary standards has been exhausted.

The Congress' emphasis upon exploring voluntary solutions to problems came at the same time as the introduction of the President's initiatives on industry self-regulation. The administration listed regulatory relief as one of the principal elements in its economic recovery package, and has continued to promote the wisdom and economic efficiency of voluntary standards.

In the 2½ years I have been at the Commission, I have seen our voluntary standards activity mature. In 1983, for example, the Commission withdrew a proposed rule on toy chests in light of an effective voluntary standard. Similarly, the Commission withdrew a mandatory standard on unvented gas space heaters in favor of a voluntary standard which provided even greater consumer safety. This year, as a result of arduous and productive voluntary standards activity addressing "kickback" from chain saws, the Commission voted unanimously to withdraw an advance notice of proposed rulemaking in favor of a voluntary standard.

I am pleased with these developments and am eager to explore other ways to encourage voluntary standards activities. One of my first acts as Chairman was to appoint a voluntary standards coordinator, the first in the Commission's history, to help move this effort forward. If confirmed as Chairman, I pledge that, in the years ahead, I will continue to emphasize voluntary standards as a particularly cost efficient and effective tool in enhancing product safety.

I wish to turn now to another important area of Commission activity—compliance and enforcement. Over the years, you have heard from the Commission on its progress in removing defective products from the marketplace. As a Commissioner, I was concerned over how such results could best be achieved. Since January of this year, I have had oppportunities to help fine tune and improve the process.

The Commission's field offices and resident posts provide valuable critical support to the agency's compliance and enforcement activities. I have sought to strengthen our field operations, not only because they constitute our eyes and ears, but because they serve as a crucial bridge to the complementary compliance efforts of sister agencies in the various States and localities.

Similarly, I have directed the staff to explore options for improving the Commission's injury data collection system. Our decisionmaking can only be as good as the information upon which is it based. While analysis of data collection systems is laborious and far from glamorous work, it is important for the Chairman to use the authority of his office to take steps to ensure that our information gathering is fully productive and on target.

I will not recite a long list of statistics, but I am pleased that the Commission's compliance and enforcement work continues to produce good results. Earlier this year, the Commission approved the largest civil penalty settlement in its history. In the first 6 months of 1985 alone, almost as many section 15 product hazard reports from industry have been filed with the Commission as were filed in all of 1984. And our product recall actions continue with a similar positive trend.

At the same time, our regulatory activity continues unabated. The Commission recently approved publication of an advance notice of proposed rulemaking, the first in several years, to address the risks associated with ATV's.

Finally, I wish to underscore my commitment to education and informing the public about the safe use of consumer products. Through our cooperative efforts with industry, consumer groups, and State and local governments, we can help fulfill our congressional mandate effectively and, at the same time, economically. I am proud of our information and education efforts this year on pool safety and safety for older consumers and believe that, when properly targeted, such campaigns can significantly help prevent injuries and deaths that otherwise might occur.

I am deeply honored and privileged to have this opportunity to serve on the Consumer Product Safety Commission. It is particularly gratifying now to be nominated by the President to serve as the Commission's Chairman. With your approval, I look forward to the opportunity to provide to the Commission the leadership so essential to the successful accomplishment of its mission.

Thank you very much.

Senator **Kasten**. Thank you for your statement.

I am pleased that we are now joined by the Senator from New Mexico, Senator Domenici.

STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Senator **Domenici**. Thank you very much, Mr. Chairman.

First, I apologize for being late. I was to be here 5 minutes ago. I only want to take a couple minutes of your time.

I am here to introduce and state my support for Anne Graham to be Commissioner of the Consumer Product Safety Commission. Perhaps for those of you who have read her background, you might wonder why a Senator from New Mexico would be here. Actually, we consider her to be an adopted New Mexican. She worked for Senator Schmitt for 3 years, during which time our office staffs worked very closely together and I had an opportunity to get to know her. I am here principally because I think she is a lady that has an awful lot of integrity, and in the past 7 or 8 years she has acquired an extensive amount of experience working with the legislative branch and the executive branch.

Her work with the Department of Education, from what I understand, has been exemplary. Part of her work at the Department was promoting betterment of education in the United States. She prepared a major white paper which has had a dramatic influence on education. I understand it was publicized and made operative out in the hinterland and among the people of our country by her efforts.

So I come here not stating her specific qualifications for this job, but merely to state to the Senators that I know her as a person of high integrity and intelligence, and from those who have worked with her I understand that whatever she sets out to do, she does well. Her accomplishments have always been the highest in whatever she undertook to do in her life.

I have a few other specifics that I have included in my statement, and with that I would ask that it be made a part of the record. I will merely state to the chairman and the members of the committee that I am pleased to introduce her and come here and say to you that I hope she will be confirmed.

Thank you, Mr. Chairman.

[The statement follows:]

STATEMENT OF HON PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Mr. Chairman, and distinguished committee members, I thank you for the opportunity to be here today. I am pleased to support the President's nomination of Anne Graham to be a Commissioner of the Consumer Product Safety Commission. Anne has held the position of Assistant Secretary for Legislation and Public Affairs at the Department of Education since August, 1981, and I have had many occasions to work with here there. However, my first association with Anne was long before this.

I have known and worked with Anne for almost ten years, including the three years that she served as Press Secretary for my former New Mexico colleague, Senator Jack Schmitt. Anne's service to the Land of Enchantment over the years as earned her the distinction of being an adopted New Mexican. During her tenure with Senator Schmitt, I was impressed with her ability and dedication to learn about New Mexico and its issues. This ability to understand her working environment will be a valuable asset as she assumes her responsibilities on the Consumer Product Safety Commission.

Anne's solid record speaks for itself, and I believe the committee will agree that it would be to our nation's benefit and good fortune to have her serve as a Commissioner of the Consumer Product Safety Commission. As a member of House and Senate staffs for three years, and with her experience at the Department of Education, Anne brings with her a working knowledge of legislative and executive branches. More importantly, as the Department of Education's chief liaison with Congress, she knows first hand how the two branches work together in the interest of the public. Furthermore, she has worked closely with State and Local officials, and understands their interest in Consumer Product Safety Commission affairs.

Although I am fully impressed with Anne's extensive employment background and the accomplishments she has made in each of these areas, I am most impressed with her integrity, dedication, and ability work closely with her fellow worker. Being a Commissioner of the Consumer Product Safety Commission requires all of these qualifications, and I encourage the Committee to act favorably on the President's nomination.

Again, I would like to thank the members of the Committee for having me here today.

Senator **Kasten**. Senator, thank you for making the effort to come here. We appreciate your statement very much.

I also would like to include in the record at this time the biographical sketch and prehearing questions along with statements of support for Anne Graham from Senator Hatch, Senator Warner, and Senator Trible.

[The material referred to follows:]

U.S. Senate,
Washington, DC, September 9, 1985.

Hon. Robert Kasten,
Chairman, Committee on Commerce, Science, and Transportation,
U.S. Senate, Washington, DC.

Dear Bob: I understand that you have scheduled confirmation hearings in early September for Anne Graham's nomination to the Consumer Product Safety Commission, and I just wanted to let you know that she has my wholehearted support.

My experience in working with Anne during her tenure at the Department of Education has been unequivocally successful. I was initially impressed with her efforts on behalf of the reforms outlined in the Department's milestone report, "A Nation at Risk," and I sincerely believe that her work with the Congress, the Media, and the educational community helped to lay the foundation for the reforms now underway at their state and local level. In the years I have known and worked with her, she has proven herself to be one of the most knowledgeable and effective appointees of this Administration.

I have complete confidence that she will demonstrate the same high standards of performance, motivation, and competence with the Commission. Although her appointment will be a loss for those of us on the Labor and Human Resources Committee, it will certainly be a gain for you, the Commission, and consumers. She has earned my respect, and I strongly endorse her nomination. In the weeks ahead, if there is anything I can do for you on behalf of Anne's confirmation, please don't hesitate to call me.

Sincerely,

Orrin G. Hatch,
U.S. Senator.

U.S. Senate,
Washington, DC, September 10, 1985.

Hon. Bob Kasten,
Chairman, Consumer Subcommittee, Committee on Commerce, Science, and Transportation, Washington, DC.

Dear Mr. Chairman: I want to take this opportunity to let you know of my support for Anne Graham's nomination to the Consumer Product Safety Commission.

As a resident of Virginia for most of her life, Anne has had an accomplished career of public service. As you may know, she served as press secretary for our former colleague from New Mexico, Harrison Schmitt, and as a result of her work, was called on to be assistant press secretary in the 1980 Reagan-Bush campaign. I was quite pleased when Anne was nominated by the President to be Assistant Secretary for Legislation and Public Affairs at the Department of Education.

Anne has been extremely effective during her tenure with the Department. She has always been responsive to the needs of my personal staff, and as the Department's liaison with Congress, she has rendered diligent and professional assistance.

Your committee and the Commission stand to benefit tremendously from Anne's motivation, ability and breadth of experience. Her knowledge of the Executive and Legislative branches will be great assets in the performance of her duties as Commissioner. I believe Anne possesses the sensibility and balanced judgment that the Commission requires, and her nomination has my wholehearted support.

Sincerly,

John Warner,
U.S. Senator.

STATEMENT OF HON. PAUL S. TRIBLE, JR., U.S. SENATOR FROM VIRGINIA

Although I regret that scheduling conflicts did not permit me to attend the hearing today, I wanted to add a statement of support on behalf of Anne Graham's nomination to the Consumer Product Safety Commission.

Anne has been a resident of Virginia for most of her life, and her recent nomination by the President is the highlight of a distringuished career in public service. Although Anne's employment is already a matter of record for the committee, I would like to add that my experience with her office has shown her to be an honest, cooperative, and forthright representative who enhances the record of this administration. The post of CPSC Commissioner is one of great public trust, and I know Anne respects, and will work to uphold, the independence and integrity of the Commission.

Anne is a dedicated and hard-working individual, and will bring perceptiveness and sound judgment which that position requires. Mr. Chairman, her nomination has my full support.

BIOGRAPHICAL SKETCH OF ANNE M. GRAHAM

Address: 3406 Halcyon Drive, Alexandria, VA.

Date and place of birth: December 28, 1949, Annapolis, Maryland.

Marital status. Single.

Education: Barnard College 1970–1971; Bradford College 1968–1970 (A.A. Degree).

Employment record: Department of Education, Assistant Secretary for Legislation and Public Affairs, T.H. Bell and William J. Bennett, August 1981 to present; Department of Education, Consultant to the Secretary, T.H. Bell, May 1981–August 1981; White House, Deputy Special Assistant for Communications, David Gergen, March 1981–May 1981; Presidential Transition, Communications, Franklyn Nofziger, November 1980–January 1981; Reagan/Bush National Campaign Committee, Assistant Press Secretary, Arlington, VA., Franklyn Nofziger, June 1980–November 1980; Senator Harrison Schmitt, Press Secretary, U.S. Senate, January 1977–November 1979;

Schmitt for Senate, Republican National Committee, Albuquerque, NM, Eddie Mahe, October 1976–December 1976; Republican National Committee, Presidential Task Force, Washington, DC, Eddie Mahe, June 1976–August 1976; Citizens for Reagan, Communications, Franklyn Nofziger, Washington, DC, March 1976–June 1976; Congressman Matthew Rinaldo, Special Assistant, Washington, DC, October 1975–February 1976; Department of Treasury, Secretary William Simon, Special Assistant, July 1974–October 1975; Federal Energy Office, Administrator William Simon, Special Assistant, March 1974–July 1974; The White House, News Summary writer/editor, Patrick Buchanan, July 1973–July 1974; The Lyn Nofziger Company, Research Director, Sacramento, CA, March 1973–June 1973; California Committee to Re-elect the President, Special Projects/Research Director, Franklyn Nofziger, Los Angeles, CA, May 1972–November 1972; Committee to Re-elect the President, Press, Tory Agnich, Washington, DC, Feburary 1972–April 1972; Republican National Committee, Assistant to Franklyn Nofziger, Washington, DC, April 1972–January 1972.

Government Experience Department of Education, Assistant Secretary for Legislation and Public Affairs, T.H. Bell and William J. Bennett, August 1981 to present; Department of Education, Consultant to the Secretary, T.H. Bell, May 1981–August 1981; White House, Deputy Special Assistant for Communications David Gergen, March 1981–May 1981; Presidential Transition, Communications, Franklyn Nofziger, November 1980–January 1981; Senator Harrison Schmitt, Press Secretary, U.S. Senate, January 1977–November 1979; Congressman Matthew Rinaldo, Special Assistant, U.S. House of Representatives, Washington, DC, October 1975–Feburary 1976; Department of the Treasury, Secretary William Simon, Special Assistant, July 1974–October 1975; Federal Energy Office, Administrator William Simon, Special Assistant, March 1974–July 1974; The White House, News Summary writer/editor, Patrick Buchanan, July 1973–July 1974.

PRE-HEARING QUESTIONS OF THE MAJORITY AND THE ANSWERS

Question 1. How do you intend to ensure that the Consumer Product Safety Commission (CPSC) is accountable to Congress?

Answer. There are currently a number of mechanisms which I support, and which I believe will ensure a close working relationship between the Commission and

Members of Congress. In addition to the normal oversight functions inherent in the authorization and appropriations process, the Commission submits detailed and comprehensive reports to Congress on all aspects of its programs and operations, and must concurrently submit copies of OMB budget estimates or requests, as well as legislative testimony or recommendations to Congress. I have also indicated my support for a constitutionally acceptable form of legislative veto regarding regulations developed by the Commission. Finally, I believe my background in both legislative affairs and communications has made me extremely aware of the need for positive and open relations between the Commission and Congress.

Question 2. A CPSC staff report issued earlier this year concluded that CPSC staff suggestions were being ignored or unnecessary delays were occurring during the development of some voluntary product standards. How should the CPSC respond in such instances?

Answer. One of my first priorities upon confirmation would be to familiarize myself with the personnel and day to day management of the Commission. It would be my intention to work as closely and efficiently as possible with the Consumer Product Safety Commission staff. I would not hesitate to inform the other commissioners if valid suggestions or information were overlooked. By the charter of the position, I would be compelled to expedite all voluntary standards which could effectively solve problems.

Question 3. Under what circumstances should the CPSC seek elimination of a product safety rule or standard? Please describe any rule or standard to which you believe such circumstances may currently apply.

Answer. In general terms, a mandatory product safety standard may not require further enforcement if a manufacturer demonstrates strict compliance with this standard over a substantial period of time, and would ensure continued product safety on a voluntary basis. I would fully support the requirement that the Commission "may revoke (a) rule only if it determines that the rule is not reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the products." (Title 15, Section 2058 (e)). At this point, I am not aware of any current product safety rules or standards which would require such modification or elimination.

Question 4. Under what circumstances should the CPSC seek a new or strengthened product safety rule or standard? Please describe any product to which you believe such circumstances may currently apply.

Answer. The statutory requirements binding a Commissioner's decisions are, to me, fairly clear—"to prevent or reduce an unreasonable risk of injury associated with (a) product." My readings thus far have given me a good deal of confidence in the priority setting functions of the Commission and the technical and analytical capability of their professional staff. Should new circumstances arise which require that the Commission take action to mitigate a product risk—either through mandatory rules or negotiated voluntary standards—I believe these risks can be dealt with quickly and accurately. However, the priorities for this fiscal year appear to both address the areas of greatest need, and make optimal use of the Commission's resources.

Question 5. A recent Wall Street Journal editorial regarding product safety regulation by the CPSC (April 24, 1985) suggested "the president may best serve the interests of consumers by designating a commissioner who understands how 'less can be more'. . . ." Please state whether you believe you fit this description and explain why.

Answer. The Consumer Product Safety Commissions's mission is to "protect consumers from unreasonable risks of injury associated with consumer products". This translates to regulatory authority over more than 15,000 types of consumer products. Particularly given the Commissions's mandate, I strongly support increasing the public safety and effectiveness of all consumer products, however, I do not believe that in all instances increased regulation necessarily leads to increased safety. Congress has mandated and I fully support voluntary standards as the first means by which problems should be solved. It is my understanding that voluntary standards usually result in more efficient and effective problem solving and may, therefore, better serve the consumer. However, should circumstances arise which require a more forceful or stringent remedy from the Commission, I would not hesitate to support such an approach.

PRE-HEARING QUESTIONS OF THE MINORITY AND THE ANSWERS

Question 1. What do you consider to be the mission of the Consumer Product Safety Commission (CPSC)? Please define the relationship between this mission and the role of industry in the area of consumer product safety.

Answer. As established by Congress the Commission is directed to encourage voluntary standards, enforce mandatory standards, initiate and monitor recalls, work with state and local officials on consumer issues, and inform consumers on product safety. The mission is diverse, and I would anticipate that the role of industry in pursing these goals will vary depending on the circumstances.

Question 2. What do you believe to be the successes of the CPSC during its existence?

Answer. Since Congress created the Commission, there has been heightened consumer awarness of product safety, increased protection from unreasonably dangerous products, increased liaison with the federal, state and local officials, and increased voluntary and when necessary mandatory standards to protect consumers from unreasonable risk. One example I have recently been very impressed with has been the product safety refinements developed by the chain saw industry. This is a program that has achieved the participation of over 90 percent of the manufacturers in an effort to reduce the number of injuries from this product, and is one I would consider to be an exemplary case of the effectiveness of voluntary standards.

Question 3. What do you see as the Commission's most significant shortcomings during its existence? What changes would you favor to overcome these shortcomings?

Answer. At this point, I am not sufficiently familiar with the internal operations of the Commission to identify any significant shortcomings. If confirmed, I would examine the Commission's operations closely to determine where improvements are warranted.

Question 4. Do you believe that the CPSC should remain an independent regulatory agency or should the agency be incorporated within one of the executive departments?

Answer. In May, 1972, Congress created the CPSC as an independent regulatory agency. In the statute, Congress intended that the Commission be independent and without pressure from various interests. This appears to work effectively, and I believe a Commission best serves the public.

Question 5. Do you believe that the CPSC should continue as a five member Commission? Would you support or oppose the reorganization of the Commission into an agency directed by a single administrator?

Answer. The CPSC has been functioning with five Commissioners since its establishment. The five Commissioner make-up of the Commission appears to have afforded the necessary checks and balances. This make-up also appears to afford the Commission a diversity of opinions and interests which provides greater debate and thus, better decision-making for the public.

Question 6. Do you believe that the Commission's priority setting mechanisms are adequate? If not, what do you believe would be a more effective means for establishing Commission priorities?

Answer. The past activities which I have been able to study appear to be entirely adequate; however, if new issues should arise which require the Commission's attention, I certainly would not hesitate to raise them.

Question 7. In 1981, the Committee voted to emphasize the use of voluntary standards over the application of mandatory standards. What are your views regarding voluntary and mandatory standards?

Answer. Voluntary standards whenever effective are preferable. It is my belief that voluntary standards can often be reached more quickly and efficiently than mandatory standards. Thus, the consumer can be better protected. Nevertheless, I would not hesitate to support mandatory standards whenever necessary.

Question 8. How do you visualize the relationship between the CPSC and state and local authorities?

Answer. I view the relationship between the CPSC and state and local authorities as an extremely important one. It is my understanding that state and local officials are often the first to seek compliance, disseminate information, and identify problems. Thus, a strong and fluid liaison effort among federal, state and local consumer officials best serves this mission. If confirmed, I would work to further strengthen this relationship.

Question 9. What percentage of the Commission's budget do you believe should be allocated to education rather than standard setting activity?

Answer. These percentages should vary depending on the number and seriousness of the risks presented to the Commission.

Question 10. What types of consumer education programs do you believe are most effective?

Answer. Depending upon the issue, I would advocate publishing pamphlets, brochures and posters, producing public service announcements and exhibits, and conducting seminars.

Question 11. What steps will you take to preserve your independence from political and industry pressures? What provisions in the Consumer Product Safety Act do you see as designed to preserve your independence from such pressure?

Answer. In any position of public trust, I believe that the safety and well-being of the public should always take precedence over vested interests. I respect the independence and integrity of the Commission, and if confirmed, will do all in my power to uphold this in any phase of the Commission's work. I support all applicable statutes and regulations—particularly sections 4 and 27 of the Consumer Product Safety Act—designed to ensure the autonomy of the Commission from any undue pressure.

Question 12. Do you believe the CPSC should have authority over amusement park rides?

Answer. I support the position recently taken by the Senate on Senator Danforth's amendment proposing additional research on the issue of amusement park safety. While the record of this industry appears to be a good one, a review of the effectiveness and adequacy of safety standards may be in order. I would also like the opportunity to look at the Commission's efforts with state and local governments on this matter in more detail. While the Commission would certainly enforce any congressionally-mandated statute affecting amusement park safety, fixed-site amusement park jurisdiction it may be a matter more properly handled at the state or local level.

Question 13. In a letter to Senator Kasten, Chairman of the Senate Commerce Committee's Consumer Subcommittee in May of 1981, Office of Management and Budget Director Stockman said the administration favored removing the CPSC authority to regulate chronic hazards. Do you agree?

Answer. The May 1981, amendments to the Consumer Product Safety Act provide the authority to regulate chronic hazards. However, other agencies are also involved and it is important not to duplicate activities.

Question 14. In March of 1981, David Stockman, Director of OMB, testified concerning the administration's proposed budget cuts for the CPSC. In his testimony, Mr. Stockman emphasized that the cuts were not designed solely to reduce the size of the Federal budget deficit but were an integral part of the administration's efforts to redirect regulatory policy. Do you share Mr. Stockman's views on this two-pronged approach to cutting the CPSC's budget?

Answer. Actually, in May, 1981, Congress directed the CPSC to attempt to obtain voluntary standards before pursuing mandatory ones. With regard to the budget level, it is incumbent on all agencies, departments and commissions to help reduce the deficit.

Question 15. One Commissioner has charged that in the case of the accordion-style baby gates the CPSC, which had been aware of deaths and injuries caused by the gates since 1981, waited until January of 1985 to halt new production of the gates. The industry has been working on a voluntary standard since 1982, but the standard is still not complete. How much time should the CPSC allow industry to adopt a voluntary standard?

Answer. Each case must be judged on the seriousness and immediacy of its risk. Since I have not had access to all of the Commission's information on baby gates, I cannot provide a substantive answer to this specific issue. I certainly recognize the tragedy of the infant deaths.

Question 16. Would you agree with a statement made in CPSC's 10th aniversary report that applying section 15 against an entire industry "provides an efficient and flexible mechanism to protect the American public"?

Answer. I would hope that all of the Commission's enforcement mechanisms would be both as efficient and flexible as possible. If an industry-wide safety problem should arise, comprehensive actions under section 15 may be both warranted and necessary. However, I would find it difficult to support the generic use of section 15 against an entire industry when a safety problem is confined to one or a limited number of manufacturers.

Question 17. Do you support the new section 15 guidelines for firms reporting potential hazards?

Answer. It is my understanding that these new policy guidelines are under review by the Commission. If confirmed, I would actively participate in this process, and believe it prudent to reserve judgment until I am able to review all of the facts.

Question 18. In your opinion, will the Commission be able to absorb another 6 to 7 percent cut in fiscal year 1987?

Answer. I am not aware of any plans to propose such cuts. Nevertheless, upon confirmation I would certainly work to maintain adequate funding levels to make sure the Commission can fulfill its mission.

Question 19. Can you outline what action the Commission is taking concerning the deaths and injuries that have been associate with "all-terrain vehicles"?

Answer. It is my understanding that the CPSC has published an advanced note of proposed rulemaking on "all-terrain vehicles". I also understand that the Commission is studying the issue by holding regional hearings, and working with state and local officials. Newspaper reports indicate that all-terrain vehicles may present a serious injury risk. It confirmed, I would make this issue a top priority.

Question 20. What is your opinion of current Commission injury date collection, particular, the National Electronic Injury Surveillance System (NEISS)?

Answer. It is my understanding that the National Electronic Injury Surveillance System provides essential statistical information, but that improvements in the Commission's information gathering process may be required.

Question 21. How do you feel about the Chairman and Commissioners traveling a great deal around the country?

Answer. When travel is necessary to carry out the mandate of the Commission, I would support it. However, I believe every Federal official has an obligation to limit travel to only what is required to fulfill the scope of his or her responsibilities most effectively.

Question 22. What qualifications do you have to serve as a Commissioner?

Answer. In my 14 year career I have held a variety of progressively responsible management positions. My positions with both the legislative and executive branches have provided me with a thorough understanding of the policy and administrative processes of the Federal Government. I have had the opportunity to work in both the U.S. House of Representatives and the U.S. Senate as well as the White House, the Department of Education, the Department of the Treasury, the Federal Energy Administration and various other organizations. This experience, I believe, is excellent preparation for service on the Commission. Over the last four years, my day to day responsibilities in the Department of Education have required extensive interaction with Members of Congress, government officials, representatives of the news media and the American public, and I have developed the abilities necessary to work effectively with people representing many diverse constituencies.

Question 23. Do you believe the current budget request for fiscal year 1986 is sufficient to carry out the agency's mandate?

Answer. I support the $33.7 million figure proposed by the Administration. However, the U.S. Senate has authorized $35 million for fiscal year 1986 and fiscal year 1987. The $35 million mark appears to be acceptable for the Commission to accomplish its statutory purposes.

Question 24. Would you support or oppose further staffing cuts at the CPSC?

Answer. Having not had exposure to the day to day activities of the Commission, I do not have the necessary knowledge to address the specifics of staffing levels. Naturally, I would continually review staffing requirements to insure that they were adequate to carry out the intent of the law.

Question 25. In your opinion, are state and local programs funded at an adequate level in the fiscal year 1986 budget?

Answer. I firmly believe that state and local programs are important to the Commission's mission. If confirmed, I would look closely at future budgets for these functions.

Question 26. What is your opinion of the policy prohibiting export of noncomplying products?

Answer. I recognize that the first priority of the CPSC is the protection of domestic consumers, and that its resources must be directed accordingly. While I do not believe the Commission should necessarily put itself in the position of regulating the consumer choices of other nations, in many cases it may be appropriate to provide clear notice that products do not comply with certain domestic safety standards. However, I believe the Commission must examine these on a case-by-case basis, and make its judgment accordingly.

Question 27. Was there an increase in section 15 reporting by industry in the last 6 months of 1984?

Answer. It is my understanding that there was no increase in section 15 reporting in the last 6 months of 1984, but that to date, section 15 reports are being filed at a record rate.

Question 28. In your opinion, should the CPSC endorse or publicly acknowledge voluntary standards?

Answer. The CPSC should promote voluntary standards whenever voluntary standards best solve the problem. If confirmed, I will examine closely the question of voluntary standards endorsement and public acknowledgement.

Question 29. What prior experience do you have which will prepare you to serve on the Commission?

Answer. Throughout my career I have complied what I believe is a solid record of accomplishments in a number of professional fields, including public affairs, communications, legislative policy, and Congressional liaison. This experience, I believe, is excellent preparation for service on the Commission. As previously stated, my day to day responsibilities in the Department of Education require extensive interaction with Members of Congress, government officials, representatives of the news media and the American public, and I have developed the abilities necessary to work effectively with people representing many diverse constituencies. In may present position I am responsible for reviewing and implementing regulations affecting the operations of a number of federal programs. Further, during my tenure at the Department of Education, I participated in the development and dissemination of "A Nation at Risk", which examined the problems confronting education and recommended solutions to those problems. This report, which heightened public awareness of the challenges in education and instigated major reforms across the country, is the most comprehensive consumer report on education in this administration. Thus, I believe I possess the management and communications skills necessary to carry out my duties at the CPSC.

Question 30. Should a recall be employed if most or all firms in an industry have sold a product which contains a common defect?

Answer. The gravity of the situation must be determined and assessed in each case pending before the Commission. In every case I would attempt to attain the most prudent solution. Certainly, there may be circumstances where a recall should be employed.

Question 31. Do you agree with a recent Heritage Foundation report which found that product liability lawsuits make the CPSC redundant?

Answer. In its report on the federal regulatory process in Mandate II, the Heritage Foundation asserted that private rights of action through product liability laws ". . .- make redundant much of the work of the CPSC." That in itself is a vague and rather open-ended statement. I would agree that product liability laws are an extremely valuable means of recourse for consumers, and that they provide a measure of deterrence against the sale of defective products. However, the degree to which these laws either duplicate or render unnecessary the work of the CPSC is purely a matter of conjecture, and to the best of my knowledge has yet to be empirically established.

Question 32. Would you support a change in section 6(b)?

Answer. Section 6(b) requires that the Commission take all necessary precautions to verify the accuracy of product information to be released to the public; a requirement that should be expected from any responsible agency. The interests of both manufacturers and consumers are enhanced if they can be assured that the information they receive from the CPSC is accurate, complete, and fair. The integrity of the Commission's information and education activities is essential if its independence and credibility are to be maintained. However, if confirmed, if I determined that improvements could be made to the mechanics of 6(b) operations, I would certainly make the appropriate recommendations to the Commission and to Congress.

Question 33. According to a CRS report, an age limit for all-terrain vehicles should be viewed as the most feasible solution to injuries and deaths associated with ATVs. Do you agree?

Answer. Given the fact that I have not had access to all of the technical data and studies regarding all-terrain vehicles, I should not prejudge solutions to the ATV problem. However, as I previously indicated, if confirmed I would make this issue a top priority.

Senator KASTEN. Now we will go to Anne Graham.

STATEMENT OF ANNE GRAHAM

Ms. **Graham**. Thank you, Mr. Chairman. I would also like to thank Senator Stafford and Senator Domenici for their generous introductions.

Mr. Chairman, members of the committee, I appreciate the confidence the President has shown in nominating me for Commissioner. I am pleased to be before the committee today to seek your consent and the consent of the Senate to my nomination.

The Consumer Product Safety Commission performs a unique and critical role for our Nation. Congress created the Commission to protect Americans from unreasonable risks associated with consumer products. Thus, the benefits of the Commission's activities are vast. There is no way to estimate how many injuries have been prevented or how many lives have been saved.

The Commission oversees more than 15,000 types of consumer products and administers six safety laws. If confirmed, I pledge to fulfill what I view as my first and foremost responsibility, the protection of the consumer in the most efficient and effective manner possible. The American public deserves no less. The Commission is charged with an unusually broad task.

I look forward to the challenges of providing effective direction and leadership at the Commission as well as working closely with this committee and the Congress to achieve the best possible consumer product safety system. With your consent, I will do my utmost to serve to the best of my abilities and fulfill my duties honorably.

Thank you for your consideration.

Senator **Kasten**. Thank you for your statement. What I would like to do is go through a few questions and because they could be addressed to either of you, I would address the questions to Chairman Scanlon and, Anne, if you have something that you would like to add, you can respond to the same questions.

Mr. Chairman, a number of people have suggested—I think that they are a minority—that the CPSC has not been accessible to members of the public. In particular we have received some information from time to time accusing the CPSC of not being accessible to groups that may disagree with the agency's policies or priorities.

I wonder how you would respond to that criticism.

Mr. **Scanlon**. Senator, we operate under the Sunshine Act, so all of our meetings are open to the public. Speaking as a Commissioner, I meet with anyone who asks to meet with me, again under the provisos of the Sunshine Act.

We have expanded our field office network from 24 to 28 in the last couple of months and I think that will help our exposure. We are having a number of public hearings right now on the all-terrain vehicle issue, which I just mentioned. Four such hearings have been held. We will have one more in Los Angeles in October.

In other matters, whenever a petitioner has come to the Commission to ask to be heard, I have voted for those, voted affirmatively to hear those petitioners. I think that would summarize my thoughts on the matter.

Senator **Kasten**. Anne, do you have any comments on public participation at the Consumer Product Safety Commission?

Ms. GRAHAM. Senator, having not been there, I cannot speak to it specifically, but I can assure you that if confirmed I will have an open door policy. If I see any problems I will make the other Commissioners aware of them.

Senator KASTEN. Mr. Chairman, some critics have suggested that the CPSC is placing too much emphasis on public education and not doing as much on the regulatory responsibility side. How would you respond to that? Are there regulatory responsibilities that you should be doing more with?

Mr. SCANLON. The Consumer Product Safety Act mandates that we provide information and education. The current budget for fiscal year 1985 for that activity is 5.4 percent of the total Commission budget and the amount proposed for fiscal year 1986 is 4.7 percent of total budget. So you can see that we are spending very little for a very important function.

As far as the regulatory activity goes, our numbers are probably better than ever. On section 15 reports, which are provided by industry to the Commission, in 1984 we had 128, and in fiscal year 1985 to date we have 165, so that is approximately one-third more.

On recalls of regulated products, those numbers also have increased significantly. In 1984, there were 66. In calendar year 1985 to date, we have 80. So, in 8 months we already have 80 recalls of regulated products.

During my chairmanship, the largest civil penalty ever levied in the amount of $800,000 took place just a few months ago against the Honeywell Corp.

Senator KASTEN. Anne, do you have any response as to the regulatory responsibilities of the Consumer Product Safety Commission?

Ms. GRAHAM. No, Senator, I do not.

Senator KASTEN. Senator Inouye, do you have any comments at this time?

Senator INOUYE. No, thank you.

Senator KASTEN. While I was in Wisconsin last week I had the chance to appear before the Consumer Product Safety Commission during its hearing on ATV's. As you know, and we discussed there, that there have been 22 ATV-related deaths in Wisconsin since 1982. Clearly this is a matter of concern to all of us, and I think there is a particular concern in Wisconsin.

What is the agency doing to address the problem and is the Consumer Product Safety Commission acting in a manner that is consistent with the 1981 Consumer Product Safety Act amendments? The part that I am concerned about is the section regarding voluntary industry standards.

Mr. SCANLON. Senator, there is much activity going on today at the CPSC with respect to all-terrain vehicles. We adopted a seven-point program which included the publication of an advance notice of proposed rulemaking, the first in 3 years at the Commission. We have some 14 people involved in what we call an ATV task force, 6 of whom, including 3 engineers, are working full time.

As regards the voluntary standard, we are monitoring the activity of the four large manufacturers of ATV. We hope to have a voluntary standard promulgated in early November, which would be one of the fastest moving voluntary standard activities in the history of the Commission. That standard will address age labeling and labeling of the vehicle itself, training, which is very necessary and which you heard about in Wisconsin last week, plus the standarization of controls on the vehicle.

Senator **Kasten**. Have you or has the Commission looked in any more detail at the new Wisconsin law? Do you think that it might make sense or that something like that might make sense for other States?

Mr. **Scanlon**. I think it would be very helpful and I hope it will be emulated by other States. As you know, the largest number of accidents involve teenagers, and that is specifically what that legislation addresses.

Senator **Kasten**. The Consumer Product Safety Commission has undertaken a consumer safety education program aimed at the needs of the elderly specifically. I would like to ask each of you, and maybe you can go first this time, Anne, what is your view of this program, this consumer safety education program for the elderly, and what efforts the agency is going to be making to address some of the special needs of particular consumer groups like the elderly?

Ms. **Graham**. Senator, I think it is very important to target the groups that are in most need of our help, and in this case I think senior citizens are a very good example of doing just that. They are a growing population and they at times are presented with more risks than the average American.

It is my understanding that the Commission has a program going that includes providing information and checklists and awareness lists, and I support that. I understand that there is going to be a senior citizens' conference in September and I look forward to going to it.

Senator **Kasten**. We had a pilot program, as you might be aware, in Philadelphia and then we wanted to have an all-American town, so we picked Green Bay, WI. The pilot program worked well in both the large city and in the smaller one, and now I believe we are going to go national. That is my understanding.

Mr. **Scanlon**. That is correct.

Senator **Kasten**. Any further comments on targeting?

Mr. **Scanlon**. The only thing I would add is that we have already mailed out 1 million copies of the Home Safety Checklist and we are beginning our second printing of another million at the current time.

Senator **Kasten**. I have other questions which I will submit for the record. There may be questions from other members of the committee who were unable to be with us. At this time I would simply like to thank both of you for appearing before the committee. We will process your nominations as expeditiously as we are able.

Thank you very much for your testimony. I am sure that you will make yourselves available for questions from other members of the committee if they submit them in writing and that you will get them back to us in an appropriate period of time.

Mr. **Scanlon**. Thank you, Senator. I want to take this opportunity to thank Senator Inouye for his very kind and generous remarks. Thank you, Senator, and thank you, Senator Kasten.

Senator **Kasten**. Thank you both.

Our next panel includes Joan Claybrook and Gene Kimmelman. It is my understanding that Mr. Alan Fox is appearing for Gene Kimmelman and that you will have a statement and Joan Claybrook, representing Public Citizen, is appearing with a statement. Are these other people accompanying you?

STATEMENTS OF JOAN CLAYBROOK, PRESIDENT, PUBLIC CITIZEN; ALAN FOX, LEGISLATIVE REPRESENTATIVE, CONSUMER FEDERATION OF AMERICA; PAM GILBERT, U.S. PUBLIC INTEREST RESEARCH GROUP; AND PRISCILLA BUDEIRI, CONGRESS WATCH

Ms. **Claybrook**. Yes, Senator.

Senator **Kasten**. There are two statements?

Ms. **Claybrook**. There are four statements. Unfortunately, the notice of the meeting of this hearing was not widely broadcast and so we were not aware of it until yesterday. We did talk with committee staff and I would like to introduce my colleagues here. They are Pam Gilbert from the U.S. Public Interest Research Group and Priscilla Budeiri from Congress Watch. I am Joan Claybrook from Public Citizen.

I am pleased to be here today, Senator, and I thank you for allowing us the opportunity to speak. I am here to urge that the committee not approve Mr. Scanlon for Chairman of the Consumer Product Safety Commission. I believe that he is not fit by philosophy or temperament to be a regulator of consumer products.

I have several points I would like to make. First, with regard to enforcement actions under section 15 and section 19, Mr. Scanlon has not voted for any significant enforcement action since he has been Chairman of the Commission. That is since last January. He has permitted closed sessions with himself and key staff with companies potentially subject to enforcement actions. I believe that this borders on the kind of activity that Rita Lavelle engaged in. It is contrary to the longstanding tradition of this agency, where the Chairman did not become deeply and personally involved on a private basis with companies and industries subject to enforcement actions.

There is a widespread belief within the Commission that the Chairman's office is communicating sensitive information to these potentially target industries, and it has hurt the morale of the agency.

Mr. Scanlon is adamantly against taking prompt action under section 15 when a defect may be present in the products of more than one company in an industry. He calls this backdoor rulemaking. He ignores the issue of the important safety of the public.

During his chairmanship, no consumer warnings have been published. For example, for the ATV investigation that the Commission has undertaken, there has been no warnings made available to urge that teenagers, children under age 16, not use these vehicles.

My colleagues will comment on the methylene chloride issue, which the staff of the Commission recommended in June as a very, very serious hazard, similar to the exposures to people in Institute, W.V., from the Union Carbide plant. No warnings have been made available to the public on those.

Mr. Scanlon prefers something called education, which is not warnings to the public but, rather, vague communications that do not warn of specific hazards. In addition, he is attempting to impose a cost-benefit test on adjudication—that is, enforcement actions against companies—which are not called for in the statute. The statute, to the contrary, requires action if a defect is posing a substantial hazard to consumers.

Second, he is the only member of the Commission who voted in favor of discontinuing the ban on dumping of products abroad. This policy has been in effect since 1978. Mr. Scanlon raised the issue and tried to get the Commission to remove its ban on such products. The only commenters in favor were a manufacturer of TRIS and the National Association of Manufacturers, who argued it would be advantageous to reduce the trade deficit, hardly a rationale for distributing dangerous products. It is very hurtful to American consumers because manufacturers can manufacture defective products with little risk if they can sell them abroad.

If Mr. Scanlon wants to reduce the trade deficit, he should take enforcement action against the manufacturers of ATV's; 96 percent of that market is Japanese, and the sales amount to $1 billion a year. In Japan they do not use these vehicles very much.

Third, in terms of rulemaking, Mr. Scanlon believes in blaming the user, not the vehicle or the industry that manufactures it.

There are a large number of consumer product deaths, as you have already commented. In 1985 we expect 100 deaths and 100,000 injuries from ATV's. It is one of the growing product hazards in the marketplace today. The Chairman has tried to undermine this rulemaking by playing games with the research survey, that would determine the cause of casualties, wanting to enlarge it to cover dirt bikes and snowmobiles, which would delay the survey and would increase its cost. And, in addition, there are concerns inside the Commission that the Chairman has tried to get OMB to deep six the whole survey.

Fourth, the Chairman has violated Commission authority when he sent directions to the chronic hazard advisory panel, which was reviewing the chemical DEHP to determine carcinogenicity and make recommendations on regulation. He sent a letter urging that they narrow the scope of review to cover only children's products and the Commissioners had to insist that a second letter changing these instructions be sent.

With regard to voluntary standards, Mr. Scanlon indicated in his testimony today that they should not be imposed unless and until the possibility of effective voluntary standards has been exhausted, but in fact that is not the instruction in the statute. Under the statute, they have to be deferred to, if they exist, and they will be substantially complied with, and that is an objective standard that should be considered. But Mr. Scanlon ignores these limitations.

I would like to submit for the record comments on the chainsaw industry voluntary standard and the toy chests which indicate that these voluntary standards have not been working correctly, as he has suggested.

Finally, in terms of control of information, I think that the question you raised, Mr. Chairman, about the issue of the availability of information is very accurate. There have been misleading press releases put out by the Commission under his authority. He removes anything that is offensive to any company before they are released, and he has systematically cut off the views of staff that departs from his own in terms of whether they can attend open meetings of the Commission and whether they can comment in a way that contradicts his views.

The staff is now uninformed, uninvolved, and afraid to state the facts in an agency whose decisions should be based on scientific evidence.

In summary, I have three quick recommendations. One, I would suggest an investigation by the IG of misuse of Government facilities, which has been alleged inside the Commission by Mr. Scanlon. Second, I would urge a GAO investigation of the circumstances under which Mr. Scanlon has inhibited enforcement actions. And, third, I would urge the committee to reject the nomination.

Thank you very much.

Senator KASTEN. Would the ranking member of the subcommittee, Senator Ford, like to make a comment or pose a question at this time, or should we proceed with the panel?

Senator FORD. Mr. Chairman, I am so late, I will pass.

Senator KASTEN. We will then go to Mr. Alan Fox, who is appearing for Mr.—excuse me, Senator Inouye.

Senator INOUYE. I am not a member of the subcommittee, but unfortunately I will have to leave. Because of the seriousness of the allegations and the charges—in fact some of the charges are criminal in nature—I would suggest that the least this subcommittee can do is to furnish a transcript of this testimony to Mr. Scanlon and invite Mr. Scanlon to respond to it, because if these charges have any credence, then I think that the nomination should be very seriously considered, keeping in mind the recommendations made by Ms. Claybrook. I say this as the one who introduced Mr. Scanlon.

This is the first time I have heard of these charges, and it would be wrong of the subcommittee to proceed with this cloud over the nominee. So I respectfully suggest that this matter be referred to Mr. Scanlon as soon as possible.

Senator KASTEN. I think that is a good suggestion. A few of the questions that I addressed to Mr. Scanlon touched on some of these issues, but the record will remain open and we will give the Commissioner an opportunity to respond and to reply.

Mr. Alan Fox, representing Mr. Gene Kimmelman of the Consumer Federation of America.

Mr. Fox.

Mr. FOX. Thank you very much, Mr. Chairman, for the opportunity to testify today. I am Alan Fox, legislative representative for the Consumer Federation of America, which is one of the Nation's largest consumer advocacy groups. We have as our membership 200 local, State and national consumer, senior, rural and other organizations.

I am here today to join in opposition to the nomination of Terrence Scanlon as CPSC Chairman. We have submitted a very brief written statement and I will summarize that and read from parts of it.

Basically our opposition is based not specifically on the same sort of issues that Joan has raised, but on an evaluation of Mr. Scanlon's past record with the CPSC, which leads us to a concern that he will not direct the agency in such a manner as to carry out the Commission's statutory mandate, the mandate that it has received from Congress, to protect consumers from unsafe products.

The following specific positions of Commissioner Scanlon give rise to our concern about his record. The first is the overemphasis on voluntary efforts. Over one-half of the CPSC budget is now spent on voluntary efforts to address safety problems. Mr. Scanlon has continually supported the voluntary route over even initiating the preliminary stages of rulemaking.

CFA believes that some voluntary efforts may be productive at certain times, but if left unchecked this trend will mean that the regulatory tools which Congress has provided to protect the public health and safety will be further ignored by the Commission.

Second, Mr. Scanlon's reluctance to use recall and rulemaking authority. In expressing his views against the use of adjudication or recalls for existing product hazards, Mr. Scanlon has stated his concern that industry may get "its reputation badly damaged." We fear that Mr. Scanlon does not appreciate the reasons why Congress gave CPSC its section 15 recall authority—that is, to expedite the removal of unsafe and dangerous products from the channels of commerce and thereby reduce consumer injuries and deaths.

Aside from missing this crucial distinction, Mr. Scanlon has failed to initiate rulemaking efforts to address safety problems. For example, Mr. Scanlon criticized the use of adjudication in the expandable enclosures and mesh-sided cribs cases, arguing that the Commission "sidestepped rulemaking altogether." Yet in these types of situations no proposals for rulemaking as an alternative have ever been forthcoming from his office.

Finally is the issue of shifting scarce resources and technical investigations. Since Mr. Scanlon has been a Commissioner, and particularly in the past year, CPSC has increasingly shifted its scarce budget dollars away from programs utilizing scientists and engineers working on product investigations and technical solutions to product safety problems.

While a lean budget requires fiscal belt-tightening, CFA believes that scientific and technical research is one of the most important functions of the Commission and needs a continuing commitment of funds for staff and contract allocations. We believe that Mr. Scanlon's positions have not evidenced such a commitment to that sort of research.

Although we do not agree with many of Commissioner Scanlon's views on the issues, we want to make it clear that our opposition is not based on any political affiliation or partisan politics, and we have appreciated his efforts in the past to communicate with us and to debate the issues with our organization. At least in terms of CFA, accessibility has not been a problem with respect to Mr. Scanlon.

But that is only part of his responsibility as a Commissioner. We fear his regulatory philosophy will and has interfered with CPSC's mandate from Congress to carry out five important laws aimed at protecting the American public, and for this reason we oppose his nomination as Chairman of the Consumer Product Safety Commission.

Thank you.

Senator KASTEN. Mr. Fox, thank you.

Now we have——

Ms. BUDEIRI. Priscilla Budeiri.

Senator KASTEN. And you are representing Congress Watch?

Ms. BUDEIRI. Yes.

Senator KASTEN. I would like to try to get the two of you to limit your statements. I have a time problem because we had not scheduled you here. We will give you an opportunity to summarize your statements and I am going to try to wrap this up quickly.

Ms. BUDEIRI. I will be brief, Mr. Chairman.

My name is Priscilla Budeiri, and I am an attorney with Public Citizen's Congress Watch. Congress Watch is the legislative and advocacy branch of Public Citizen, an organization founded by Ralph Nader in 1971 to espouse the interests of consumers. We are supported by 80,000 members throughout the United States.

I am testifying today in opposition to the confirmation of Terrence Scanlon as Chairman of the Consumer Product Safety Commission. Congress Watch opposes Mr. Scanlon's nomination because his record as a Commissioner and as Chair of the CPSC since December 31, 1984, plainly illustrates his inability to lead the CPSC to accomplish the mandate Congress gave it—that is, helping save the approximately 30,000 lives that are lost each year and the 36 million injuries caused each year by consumer products in the United States.

For example, although Mr. Scanlon bragged in testimony before the House Subcommittee on Health and the Environment in May of this year that CPSC activity under section 15 of the Consumer Product Safety Act has "remained vigorous," he has vehemently and repeatedly, for example, 2 months before his House testimony, criticized the use of section 15 authority—that is, the authority given to the CPSC by Congress to recall and halt the production of products known to be hazardous.

Thus, Mr. Scanlon would prefer to leave hazardous products in the home and in the marketplace, where they can cause injury or death, rather than remove them so they can do no harm.

Another example of Mr. Scanlon's proven inability to carry out the mandate Congress gave the CPSC is his advocacy of companies' ability to dump products that have been banned in the United States in other countries. Not only does Mr. Scanlon's position give all "made in America" products a bad name and cause harm to foreign consumers, it also harms consumers in the United States. His policy harms U.S. consumers because a manufacturer knows that he can put any product in U.S. commerce since if it is caught, it can simply continue production and export the product.

Mr. Scanlon stated to the House Subcommittee on Health and the Environment that "the consequences of CPSC decisions may literally be of a life and death nature for individuals exposed to dangerous products." Yet again his actions belie his words, as is shown by Mr. Scanlon's stand on voluntary standards as they relate to smoldering ignition fires of upholstered furniture.

There is nothing wrong with working with industry to establish voluntary standards. Indeed, voluntary standards may be cheaper and faster to promulgate than mandatory standards. However, when the issues are difficult or complex, or if the industry is not organized or is uncooperative, voluntary standards are less likely to be an effective answer.

Mr. Scanlon's insistence on trying to establish voluntary standards on the issue of smoldering ignition fires of upholstered furniture is nothing short of a disgrace. As you know, people leaving lighted cigarettes on furniture is one of the most common causes of fire. Such fires are also caused by other heat and fire sources. These fires occur in our homes, our neighbors' homes, which may also cause fire in our homes, and in hotels and restaurants. They cause 2,000 deaths and 9,500 injuries a year. They also cause increases in home insurance premiums.

A CPSC study has found that most victims are asleep when they are injured in these fires and a high percentage of victims are incapacitated by alcohol, drugs, or infirmity. While education and smoke detectors will help decrease the number of deaths and injury caused by these factors, the promulgation of standards to improve the resistance of furniture to smoldering ignition fires is indispensible.

Despite the need for regulation in this area, however, Mr. Scanlon, as a Commissioner since 1983 and as Chair since late 1984, has dragged his feet and, therefore, let the deaths and injuries continue because of upholstered furniture fires.

Mr. Scanlon still insists on having voluntary standards after 7 years of industry cooperation.

Senator **Kasten**. Could you summarize your comments, please?

Ms. **Budeiri**. As of this point, however, we still do not have protection for consumers from fires. The goal set by industry to reduce smoldering ignition fires by 80 percent has still not been realized.

Although I could have cited many other examples of Mr. Scanlon's proven refusal to carry out the mandate of the CPSC, the few examples I have cited alone are sufficient reason why this committee should not let Terrence Scanlon hold any position on the Consumer Product Safety Commission.

Thank you.

Senator **Kasten**. Thank you, Priscilla.

Our next witness is Pam Gilbert.

Ms. **Gilbert**. Thank you, Mr. Chairman, for the opportunity to speak here today. I will try to be brief.

My name is Pamela Gilbert. I am a staff attorney for the U.S. Public Interest Research Group. U.S. PIRG is a nonprofit, nonpartisan consumer and environmental advocacy group which serves as a national office for State PIRG's across the country.

I appear before you this afternoon to join in opposition to the nomination of Terrence Scanlon to be Chairman of the Consumer Product Safety Commission. Since his recess appointment to the CPSC chairmanship on December 31, 1984, Mr. Scanlon has not shown a sincere commitment to the congressional mandate of the Consumer Product Safety Act, which is to protect the public against unreasonable risk of death and injury from consumer products.

During his month tenure, Mr. Scanlon has demonstrated time and again that he is not willing to devote the resources necessary to discovering those products that pose a hazard to the public and to enforcing adequate remedies to remove those products from the marketplace. In my brief time today I will focus on Mr. Scanlon's reactions to CPSC budget cuts to illustrate this point.

In the first 10 years of its existence, CPSC's budget in real terms decreased by 46 percent. Just since 1981, CPSC's staff and funding have been cut by over one-third. This budget decrease was significantly greater than was suffered by any other Federal health or safety regulatory agency in that same period.

What is more, these cuts have affected an agency that was small to begin with.

In 1974, it started with a budget of about $30 million, and one which has proved to be extremely cost effective. According to the Consumer Federation of America, since the creation of the CPSC there have been over 6 million fewer deaths and disabling injuries in household accidents, which amounts to approximately $21 billion in savings to consumers, business, and Government. During this same period, the agency has cost the Government less than $400 million.

When Mr. Scanlon was appointed as CPSC Chairman, the Office of Management and Budget proposed a 10-percent cut in the agency's budget, which came on top of a 30-percent cut in 1981 and a 10-percent cut in 1983. Instead of reacting as an advocate for an adequate funding level for the agency he was appointed to head, Mr. Scanlon responded by saying that "the agency has some fat" and there is room for further budget reductions.

In testimony before the Energy and Commerce Committee of the House of Representatives in May of this year, Mr. Scanlon stated that his challenge is "to contribute to the efforts by the President and the Congress to trim our Nation's deficits." That may be a laudable goal for the Senate Budget Committee; it is not appropriate for the Chairman of the Consumer Product Safety Commission.

The CPSC was established to prevent product-related deaths, illnesses, and injuries by researching and investigating product hazards, developing uniform safety standards for consumer products, and ordering recalls and public warnings for specific products where appropriate. Given the high number of product injuries in this country, this is no small task.

At the beginning of this year, when OMB proposed slashing CPSC's budget, Commissioner Stewart Statler listed some current projects that would be adversely affected by such reductions. These included inquiries into: Kerosene and gas space heaters, chimney standards, poison prevention efforts, toy safety enforcement, and toy age-labeling requirements. Delays in setting such product standards can cost society thousands of deaths and injuries and millions of dollars in lost wages and medical bills.

The next time the CPSC budget is discussed, the American public needs a Chairman who will fight for sufficient funds to protect their health and safety from hazardous products. I fear we cannot depend on Mr. Scanlon to be our advocate. Therefore, I urge you to reject his nomination as Chairman of the CPSC.

Thank you.

Senator **Kasten**. Thank you, Pamela.

The committee record will remain open for 10 days, and during that period of time we are going to give the Commission and Chairman Scanlon an opportunity to respond to the questions that have been raised by this panel. So thank you all—Alan, Joan, Pam, and Priscilla—for being here. We will be working with the Commission in terms of responding to these different questions.

As I said, the record will remain open for 10 days for additional material concerning these nominees. The hearing is now adjourned.

[Whereupon, at 3 p.m., the committee adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

COMMITTEE ON POST OFFICE AND CIVIL SERVICE,
SUBCOMMITTEE ON CIVIL SERVICE,
Washington, DC, September 12, 1985.

Senator BOB KASTEN,
Chairman, Subcommittee on the Consumer, Committee on Commerce, Science, and Technology, U.S. Senate, Washington, DC.

DEAR SENATOR: I understand that your subcommittee has been holding hearings on the nomination of Terrence M. Scanlon to be Chairman of the Consumer Product Safety Commission.

As chairwoman of the Subcommittee on Civil Service, I have watched closely the operations of the Senior Executive Service, created by the Civil Service Reform Act of 1978. One provision of that law [5 U.S.C. 3395(e)(1)(A)] prohibits an agency from involuntarily reassigning a career member of the Senior Executive Service within 120 days after the appointment of the head of the agency. This provision was designed to ensure that a new Administration gives a career executive a chance to prove himself or herself before being subject to a forced move. Despite considerable political pressures in 1981, the Reagan Administration generally complied with this requirement.

The first major violation of this provision occurred on February 10, 1985, when new Consumer Product Safety Commission Chairman Scanlon involuntarily detailed the highest ranking Senior Executive at the Commission. Mr. Scanlon used the technical distinction between a detail and a reassignment to defend his action. Not only do I find this defense unpersuasive, I believe that circumventing the law in this way seriously undermines the protections contained in the Civil Service Reform Act.

I ask that this letter be included in the record.

With kind regards,

Sincerely,

PATRICIA SCHROEDER, *Chairwoman.*

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC, September 11, 1985.

Hon. TERRENCE M. SCANLON,
Chairman, Consumer Product Safety Commission,
Washington, DC.

DEAR CHAIRMAN SCANLON: Enclosed is a copy of the transcribed testimony of Joan Claybrook, President of Pubic Citizen, from yesterday's nomination hearing before the Senate Committee on Commerce, Science, and Transportation. Your response to the allegations contained in Ms. Claybrook's testimony is herby requested by the Committee.

Sincerely,

JOHN C. DANFORTH,
Chairman.
ERNEST F. HOLLINGS,
Ranking Minority.

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON D C 20207

The Chairman

September 13, 1985

The Honorable John C. Danforth
Chairman
The Honorable Ernest F. Hollings
Ranking Minority Member
Committee on Commerce, Science
  and Transportation
United States Senate
Washington, D.C. 20510

Dear Messrs. Chairman and Ranking Minority Member Hollings:

Thank you for this opportunity to respond to the testimony of Joan Claybrook, President of Public Citizen, heard at the September 10, 1985, nomination hearing before the Committee. I shall be as responsive as possible, keeping in mind that Ms. Claybrook's statement contains allegations and occasional innuendo which are entirely devoid of facts. I shall correct the record where one has sought to be established, since I find that in those instances that she attemped factual statements, she invariably has distorted my views and misstated the facts.

1. Ms. Claybrook alleged several times that I, together with "key staff" met in "closed sessions" and transmitted sensitive information to "potentially target industries". (Transcript, pgs. 29-30). She specified no instances.

In fact, there is no substance to this allegation. I have faithfully approached my responsibilities at the Commission with a keen appreciation for fair and impartial consideration of all issues, including enforcement actions, and have conducted myself, and instructed my staff, in accordance with this view.

2. Ms. Claybrook alleged that I have been unsupportive of Commission enforcement actions pursuant to sections 15 and 19 of the Consumer Product Safety Act. (Transcript, p. 29). She specified no instances.

This assertion overlooks, for example, the fact that I voted to issue an administrative complaint in Honeywell, Inc., CPSC Docket 83-2, which resulted in this year's acceptance by the Commission, through my leadership, of an $800,000 settlement in that case, the largest in the Commission's history. Furthermore, as I stated in my testimony, in the first six months of 1985 alone, nearly as many Section 15 product hazard reports from industry have been filed with the Commission as were filed in all of 1984. And our product recall actions continue with a similar positive trend.

Nor does my record on vigorous enforcement activity stop with section 15 actions. This week, for example, the Commission obtained a a court award that included the largest fine ever assessed under the Federal Hazardous Substances Act: a $12,000 judgment in the U. S. District Court against a violator of the CPSC's fireworks regulations. As Chairman, I have worked with staff to aggressively prosecute cases that arise within the Commission's regulated products jurisdiction, as well.

3. Ms. Claybrook criticized my concern with backdoor rulemaking. (Transcript, p.30) My views on the desirability of rulemaking to address industrywide product safety problems so as to permit public input have been publicized. Yet, her statement that I am against section 15 action where there would exist a defect in the products of more than one company was a distortion of my views. In fact, as I made clear in my answers to the pre-hearing questions of the minority, I would not rule out section 15 action in such cases.

4. Ms. Claybrook alleged that during my chairmanship, no consumer warnings have been published and alleged the lack of a warning accompanying our investigation into All Terrain Vehicles (ATVs) as an example. (Transcript, p. 30)

Ms. Claybrook is wrong. A consumer warning on ATV use was issued in August 1985. Other consumer warnings issued this year include the following:

- "Some Crib Cornerposts May Be Dangerous" (Feb. 1985)
- "Replacement Program Offered for Columbia Parkcycle Front Forks" (Feb. 1985)
- "Deadly Game: Kids Race Closing Garage Door, 21 Die in 13 States Since 1981" (Feb. 1985)
- "Safety Agency Warns Consumers of Fire Hazards from Heat Tapes" (Feb. 1985)
- "CPSC Warns Consumers of Bunk Bed Hazards" (March, 1985)
- "Lawn Darts are Dangerous to Children" (May, 1985)
- "Century Products and Product Source, Inc. to Recall Infant "Crib Cuddle" (July, 1985)
- "Questor Crib Brackets and Mattress Support Hangers to be Replaced" (July, 1985)
- "CPSC Warns Consumers of Dangers With Mesh Drop-Side Playpens and Portable Cribs" (July, 1985)
- "CPSC Warns Parents About Child Accidents in Recliner Chairs" (July , 1985)
- "Battery Operated Toy ATV's to be Retrofitted" (August, 1985)

5. Ms. Claybrook accused me of preferring "something called education" rather than warning of specific hazards, (Transcript, p. 31), and of attempting to impose a cost-benefit test on adjudication. She specified no instances.

The Consumer Product Safety Act encompasses several purposes, among which are "(1) to protect the public against unreasonable risks of injury associated with consumer products; and (2) to assist consumers in evaluating the comparative safety of consumer products." It is incumbent upon the Commission to take the steps necessary to ensure that all of the CPSA's statutory purposes are carried out. I consider both our information and education efforts, and our hazard identification and correction programs to be important, and have never sought to substitute one for the other in inappropriate circumstances. Nor have I sought to impose what Ms. Claybrook terms a "cost-benefit" test on adjudicatory matters.

6. Ms. Claybrook criticized me for trying "to get the Commission to remove its ban" on "dumping of products abroad." (Transcript, p. 31) Ms. Claybrook then stated: "It is very hurtful to American consumers because manufacturers can manufacture defective products with little risk if they can send them abroad." Id.

Ms. Claybrook apparently was unaware that, in 1978, Congress amended our statutes to provide notice of noncomformance to recipient countries. As the Commission itself was compelled to acknowledge: "By the 1978 amendment to section 15 of the FFA, Congress evidenced its intent that the responsibility for protecting citizens of other countries lies with the governments of those other countries and not with the Commission." See In the Matter of Imperial Carpet Mills, Inc. CPSC Docket No. 80-2 (July, 1983). Based upon this unambiguous Congressional intent, I supported a uniform Commission policy under the Flammable Fabrics Act, the CPSA and the Federal Hazardous Substances Act (FHSA), that would require manufacturers to give the Commission 30 days notice of intent to export noncomforming products. This notice would respect Congressional intent, while still allowing the Commission an opportunity to deny export if re-importation was contemplated, as well as give the receiving country an opportunity to refuse entry of such goods.

7. Ms. Claybrook accused me of "blaming the user, not the vehicle or the industry" that manufacture ATVs, and of trying to "undermine" the Commission's rulemaking proceeding "by playing games with the research survey." She further alluded to "concerns inside the Commission" that "they (sic) have tried to get OMB to deep six the whole survey." (Transcript, p. 32) Ms. Claybrook offered no quotations of mine, proferred neither names nor dates, and introduced no written evidence.

These charges are groundless. As I stated in my answers to the pre-hearing questions of the minority, the Commission is still in the process of gathering data on the hazards posed by ATVs. At this stage, the Commission does not have sufficient information from which to draw conclusions, and I have studiously avoided expressing an opinion which may constitute, or appear to constitute, prejudgment of matters that may be submitted to me in my quasi-judicial capacity as a Commissioner.

With respect to the Commission's research survey, I am pleased to note that the survey is right on track. To be sure, questions have arisen both among the staff and among the Commissioners as how best to construct the survey to achieve maximum utility. But, at every step, the issues have been resolved expeditiously and fairly. A request for approval to conduct the survey has already been submitted to OMB.

8. Ms. Claybrook accused me of violating Commission authority in sending a letter to the Chronic Hazard Advisory Panel (CHAP) on the chemical DEHP. (Transcript, p.32)

The chronology of events concerning letters I have sent to the CHAP on DEHP is as follows: On January 31, 1985, a letter was sent by me to the CHAP members congratulating them on their selection. The letter briefly summarized the mission of the CHAP in a way that Commissioner Saundra Brown Armstrong suggested might leave the impression that the scope of the CHAP's inquiry was unduly limited. Notwithstanding the fact that the authoritative charter for the CHAP was established by statute and by an official Federal Register notice of December 22, 1983, I was pleased to accommodate Commissioner Armstrong's concern by tracking that charter more literally in a second letter issued the following day (February 1, 1985). To my knowledge, no one has ever suggested a violation of Commission authority with respect to the directions sent to the CHAP on DEHP.

9. Ms. Claybrook criticized the emphasis on voluntary standards that appears in my testimony and accused me of ignoring the limitations placed on voluntary standards deferral. She recited no specific instances. She also suggested that the chainsaw and toy chest voluntary standards are not working and that she would introduce information so indicating. (Transcript, p. 33)

As with her criticisms of my position on CPSC export policy, Ms. Claybrook has a policy difference here, not only with me but with the Congress. What Ms. Claybrook characterizes in the statutory test for voluntary standards deferral as merely "an objective standard that should be considered" was deemed so important by Congress that it effectively appears in the statute not just once but twice. See CPSA §7(b) and CPSA § 9(f)(3). Furthermore, the Commission immediately upon commencing rulemaking is directed by Congress to invite voluntary standards development to address the risk of injury identified. See CPSA § 9(a)(6). If Ms. Claybrook objects to this Congressionally mandated emphasis upon voluntary standards, her efforts would be better directed towards working for changes in the law.

Ms. Claybrook's confusion as to where to petition for her grievances with voluntary standards is matched by her lack of understanding as to where to make known her comments on compliance with voluntary standards. I was pleased to join with my fellow commissioners in deferring to voluntary standards in both the chainsaw and toy chest rulemaking proceedings. What Ms. Claybrook apparently does not know is that the Commission is engaged in closely monitoring compliance with these voluntary standards. Rather than wait for a nomination hearing before this Committee to submit to the Congress her comments and information on compliance, Ms. Claybrook might have made them available to the Commission, which is in the business of monitoring compliance. I certainly would be interested in seeing any information in her possession that bears on the success rate of these important standards.

10. The balance of Ms. Claybrook's testimony comprised a series of bald and baseless allegations:

- Ms. Claybrook alleged that there have been misleading press releases put out by the Commission under my authority. (Transcript, p. 33) She recited no instances. In fact, there are none.
- Ms. Claybrook alleged that I remove things from press releases to accommodate companies. (Transcript, p. 33) She recited no instances. In fact, there are none.
- Ms. Claybrook alleged that I have systematically cut off the views of staff that depart from my own views. She recited no instances. (Transcript, p. 33) In fact, there are none.

Finally, I note Ms. Claybrook begins and concludes her testimony with remarkably broad and unfounded allegations. She believes that I am not fit to be a regulator of consumer products (Transcript, p. 29) and that the staff is now "uninformed, uninvolved, and afraid to state the facts." (Transcript, p. 33) She claims a misuse of government facilities based on allegations "inside the Commission". Id.

Ms. Claybrook has made some grave charges about the operations of the CPSC, some going back many months and, in some cases, years. If she wanted those charges given serious consideration, one would have expected her not to wait until the afternoon before the scheduled hearing on my nomination to raise them. Rather, I might have expected her or her organization to enter an appearance in our appropriation hearings in the Senate (on March 27, 1985) or in the House (on April 23, 1985), or in our oversight and reauthorization hearings in the Senate (on May 1, 1985) or in the House (on May 6, 1985). But neither she nor her organization did.

Were there such concern over the course of our ATV investigation, I might have expected her or her organization to enter an appearance at the House Government Operations oversight hearing on ATVs (May 21, 1985) or at the Commission's public hearings that have been held around the country: in Jackson, Mississippi (on May 30, 1985); in Concord, New Hampshire (on July 25, 1985); in Dallas, Texas (on June 17, 1985); and in Milwaukee, Wisconsin (on September 3, 1985). But neither she nor her organization did.

Were she or her organization so concerned about the direction of the agency, I might have expected an appearance at the Commission public hearing on FY '87 priority projects. But neither she nor her organization did.

In fact, a review of the records of the Commission's Office of the Secretary reveals that since my appointment to the Commission, there has not been a single instance in which Ms. Claybrook has petitioned the Commission, requested to appear before the Commission, or entered an appearance before the Commission. During the same period, Public Citizen has been recorded as appearing before the Commission exactly once, and that single instance was a year and a half ago.

I invite Ms. Claybrook to discuss her concerns about the Commission and my leadership with me. During my two and one half years as a commissioner, I have had the pleasure of meeting and working with a variety of interested, responsible consumer-representative organizations. These exchanges have not always resulted in agreement, as evidenced by other testimony you heard at Tuesday's hearing, but they have always been conducted in an open manner and constructive spirit. Such groups make an invaluable contribution to the work of this agency and I am thankful for their active involvement.

Sincerely,

Terrence Scanlon

Terrence Scanlon
Chairman

JOHN C. DANFORTH, MISSOURI, CHAIRMAN

[illegible] OREGON
[illegible] ARIZONA
[illegible] KASSEBAUM, KANSAS
[illegible] SOUTH DAKOTA
[illegible] WASHINGTON
[illegible] ALASKA
[illegible] WISCONSIN
PAUL S. TRIBLE, JR., VIRGINIA

ERNEST F. HOLLINGS, SOUTH CAROLINA
RUSSELL B. LONG, LOUISIANA
DANIEL K. INOUYE, HAWAII
WENDELL H. FORD, KENTUCKY
DONALD W. RIEGLE, JR., MICHIGAN
J. JAMES EXON, NEBRASKA
ALBERT GORE, JR., TENNESSEE
JOHN D. ROCKEFELLER IV, WEST VIRGINIA

W. ALLEN MOORE, CHIEF COUNSEL AND STAFF DIRECTOR
RALPH B. EVERETT, MINORITY CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate
COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION
WASHINGTON, DC 20510

September 12, 1985

Ms. Joan Claybrook
President
Public Citizen
2000 P Street, N.W.
Washington, D.C. 20036

Dear Ms. Claybrook:

The members of the Senate Committee on Commerce, Science, and Transportation are very concerned about the serious allegations of misconduct made in your testimony before the Committee regarding the nomination of Terrence M. Scanlon to be Chairman of the Consumer Product Safety Commission. The Committee requests that you provide any additional information you have about these allegations.

Sincerely,

Jack Danforth
John C. Danforth
Chairman

Fritz Hollings
Ernest F. Hollings
Ranking Minority

Public Citizen
Congress Watch • Critical Mass Energy Project • Health Research Group • Litigation Group • Tax Reform Group

September 23, 1985

Honorable John C. Danforth, Chairman
Honorable Ernest F. Hollings, Ranking Minority Member
Committee on Commerce, Science, and Transportation
United States Senate
Washington, D.C. 20510

Dear Senator Danforth and Senator Hollings:

I am writing in response to your letter of September 12, 1985 requesting additional information concerning my September 10, 1985 testimony before the committee on Terrence M. Scanlon's nomination for Chairman of the Consumer Product Safety Commission.

I appreciate this opportunity to supplement my testimony and more thoroughly document my comments. Unfortunately, because of the short public notice about this confirmation hearing, I was not aware of it until September 9, and was able to present only a broad outline of numerous concerns.

In submitting this letter, I want to again urge the committee to undertake a thorough investigation of this nomination. If the committee decides to follow this course of action, I would be pleased to submit the names of at least 30 individuals who, in response to subpoena and under oath, could substantiate the statements in this letter.

To assist you in reviewing this matter, this letter will consider four categories of charges that warrant further investigation.

Misuse of Government Property

Mr. Scanlon, both at the Department of Commerce where he served as a civil servant for a number of years, and since becoming a commissioner of the CPSC, has used government staff and government equipment and facilities to perform work for the "right-to-life" movement, and for personal business transactions, including real estate properties he owns and leases. This misuse of government staff and facilities for private purposes includes: use of agency secretarial services, photocopy and mail facilities to prepare and distribute right-to-life materials and to prepare bills and notices and deposit rents concerning his leases and personal finances; use of commission funds to pay for taxi fares and other local travel costs to hand-carry "right-to-

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life" materials to various locations in Washington and to otherwise foster such activities. In short, Mr. Scanlon uses his office staff and government property to conduct personal, private work on government time and at government expense.

Apart from the misuse of staff and agency resources, Mr. Scanlon may be acting in violation of Section 4(c) of the Consumer Product Safety Act (15 U.S.C. 2053(c)), by virtue of his significant involvement in "right-to-life" outside activities. This provision of the law states that, "A Commissioner may not engage in any other business, vocation, or employment." Mr. Scanlon may also be in violation of the Commission's regulations on Employee Standards of Conduct (16 CFR 1030.408). The committee should determine whether Mr. Scanlon has complied with 16 CFR 1030.408(c) which requires advance approval from the agency's Ethics Counselor before engaging in the activities he describes in the biographical information he submitted to the Commerce Committee where they create a real or apparent conflict with employee responsibilities. CPSC has a "Request for Approval of Outside Activity" form which must be filed for officer/membership positions. (See Appendix A)

Improper Actions on Behalf of Companies Subject to CPSC Regulation or Enforcement

Mr. Scanlon and the staff he has brought to the Commission are known by numerous Commission staff members to have violated Commission rules governing meetings with companies and industries subject to Commission proceedings on a number of occasions. The CPSC open meeting policy rules are found in 16 CFR 1012. They were issued in the early days of the Commission during the tenure of Chairman Richard Simpson, who was appointed by President Richard Nixon. Chairman Simpson stressed the importance of a multi-headed regulatory commission being above reproach in its dealings with regulated companies. The rules require any Commissioner or staff member to list a planned meeting with a company or trade association subject to commission proceedings seven days in advance to permit other commissioners or staff to attend. The public can also attend such meetings but rarely does. A log must be filed afterwards covering the substance of the meeting. The General Counsel can waive the seven day notice requirement for cause, such as the unexpected appearance of foreign visitors, etc.

The following are examples of cases where there is clear evidence or very strong circumstantial evidence that Mr. Scanlon has improperly acted on behalf of companies or industries, or directly or through his personal staff privately communicated with industries or companies in violation of the Commission's rules or contrary to commission decisions. This issue has also surfaced in recorded meetings of the commission where fellow commissioners have complained about leaks of sensitive enforcement information and documents to an affected industry or company in matters where Chairman Scanlon has argued for taking the least offensive or least aggressive action against a particular firm or industry, or no action whatsoever.

1. All Terrain Vehicle Survey

The Commission recently initiated a rule making proceeding to consider standards (and also possibly an enforcement action) on these three-wheeled off-road vehicles imported from Japan which are growing in popularity, particularly among young teenagers. It is expected that 100 people will die and well over 100,000 will be injured in 1985 largely as a result of their instability and the lack of experience of the youthful drivers. This summer the Commission was planning to conduct a consumer exposure survey of ATVs but the industry, to delay and deflect the investigation, pushed to get it expanded to include snomobiles and dirt bikes. Some Commissioners, concerned about this diversion, insisted on a vote on the scope of the survey, deciding by 3 to 1 (Scanlon) to limit the survey to ATVS only. Mr. Scanlon then moved to circumvent this decision. He instructed the Executive Director to contact the Office of Management and Budget, which must clear such surveys, to undermine the position taken by the Commission. The agency has not yet gotten OMB clearance. This overt advocacy of the ATV industry request and attempt to subvert the Commission decision to the contrary suggests a very strong and determined commitment by Mr. Scanlon to the industry, even at the risk of violating agency rules and alienating his colleagues by attempting to secretly overturn a Commission decision.

2. All Terrain Vehicle Secret Meeting in New Hampshire

On July 25, 1985, the Commission held a public hearing in New Hampshire on ATVs. Significantly in advance of this meeting, Mr. Scanlon arranged for a private, closed-door meeting with ATV industry representatives to be set up for the next day, July 26, 1985, in Concord, New Hampshire. Although at least one other commissioner and staff were there for the public hearings, there was no listing of the meeting on the public calendar, and none of them were told about the meeting. At the last minute, Mr. Scanlon apparently realized the risk he was taking and did not attend. Instead the Executive Director ran the meeting at Mr. Scanlon's direction and on his behalf, and the General Counsel waived the seven-day notice requirement.

3. September 11, 1985 Aaron Locker Visit

The day after the Senate confirmation hearing on Mr. Scanlon's nomination, Aaron Locker, Counsel for the Toy Manufacturers of America (TMA) and the Juvenile Products Manufacturers Association (JPMA), met with Mr. Scanlon at his office. Mr. Locker is a trusted confidante to Mr. Scanlon, and helped him secure the recess appointment as Chairman. The purpose of his sudden visit presumably was to consult about how to respond to the criticisms raised at the Senate Commerce hearing. Mr. Locker is a frequent visitor to the Commission, and very familiar with the rules about advance notice. Yet the meeting has never been listed by Mr. Scanlon on the public calendar, even with a waiver of the rule. Nor is there any written log filed on the meeting.

4. Delay of Recall of V-Shaped Baby Gates

These dangerous gates came to the Commission's attention in 1981, and in 1982 the industry agreed to develop an industry-wide voluntary standard. Over the next several years little progress was made on the standard and no manufacturer moved to redesign its product to remove the lethal risk. By mid-1984 the CPSC was aware of seven deaths and 23 non-fatal injuries. Following another baby death from this design in October 1984, the CPSC enforcement staff sent a letter to the six manufacturers urging them to cease production of this design without delay. Five of the six agreed. But two weeks after the letter, in a closed Commission enforcement meeting, Mr. Scanlon criticized the Chief of Enforcement in the presence of other commissioners and enforcement staff and then dispatched a memorandum chastising him for exceeding his authority.

Two days later, Aaron Locker of TMA and JPMA wrote to the same enforcement official complaining about the imposition of what he claimed amounted to a ban by one agency official, mimicing Scanlon's presumably private complaint. In addition, the entire industry quickly learned of Mr. Scanlon's complaint, backpedaled on their promise, and continued manufacturing until the Commission finally worked out a voluntary agreement to discontinue production of the gates by the end of January. But during the two and one half month period, an additional 50,000+ of the defective baby gates were marketed. (See Appendix B)

5. Secret Unilateral Alteration of Emerson Electric Consent Decree

In 1980 the Commission signed a consent decree with Emerson Electric. Just a few weeks ago in late August 1985, following a routine inquiry from Senator John Danforth's office, Mr. Scanlon arranged from his vacation home to unilaterally amend the decree, an act that is not permitted under the statute, and is a gross departure from any prior Commission action. He directed the Executive Director to order the enforcement staff to send Emerson a letter relieving it of certain compliance aspects of the decree. His orders were carried out without notice even to other commissioners who may still be unaware of this action.

6. Gas Valve Briefing Package Disclosed to Essex Co.

Robert Sussman, who represents Essex Company and other clients before the Commission, prepared a submission to the agency for his client concerning an enforcement proceeding relating to the company's gas valve. His letter of May 8, 1985 at one point references the position of the Commission staff "as part of its briefing package," and makes other knowing references to matters contained in that restricted package. Like all enforcement matters, the staff briefing package was marked "restricted" and was not to be disseminated outside the Commission, especially not to counsel for the company under investigation. Mr. Scanlon and his personal staff have held at least one unlogged meeting with Mr. Sussman. In a memorandum, Mr. Scanlon also used arguments to the Commission staff that tracked closely those of the Essex counsel. There is an unavoidable presumption that Mr. Scanlon or his staff inappropriately shared the staff briefing materials and restricted Commission deliberations with Mr. Sussman.

7. Delay in Action on Upholstered Furniture Fires

The upholstered furniture industry has been a vigorous supporter of Mr. Scanlon for Chairman of the CPSC. And since he became Chairman, the industry trade association, which had been working cooperatively, if not timely enough, on a voluntary standard to prevent fires from smoldering cigarettes, has become resistant to fulfilling its prior pledges and to setting any further goals for the voluntary standard. At the same time, the Executive Director, Dr. DeFiore, held up for several months a staff report and Commission briefing on the problem. Although the industry is clearly resistant to further cooperation, Dr. DeFiore insisted that the staff report conclude that the industry is doing everything it can, and that the report make no strong recommendations for further action by the industry.

Every year there are some one thousand Americans killed in the several thousand fires caused by smoldering cigarettes catching furniture on fire, yet UFAC has not met its promised 1982 goal of an 80% reduction in smoldering-ignition cigarette fires. In CPSC budget and operating plan sessions, Mr. Scanlon has also attempted to eliminate or slash agency resources allocated to the support work needed to deal with the remaining smoldering-ignition problems. In his public statements, Mr. Scanlon consistently refers to this program as successful and completed, while he has attempted internally to stop further CPSC involvement and staff activity.

8. Misleading Instructions to the Chronic Hazard Advisory Panel

In January 1985, The Commission engaged in a heated and extensive discussion about the proper scope for an inquiry by its chosen Chronic Hazard Advisory Panel set up to review the carcinogenicity of the chemical DEHP. Authority for the scientific review panel was created by the 1981 statute. Following a 3 to 1 vote (Scanlon) by the Commission on January 30, 1985 to ask the panel to look at all consumer products using DEHP, as Chairman Mr. Scanlon wrote a letter the next day, January 31, 1985 to the CHAP members instructing them to consider only children's products, a narrow scope of review favored only by him and the affected industry, and explicitly repudiated by the other other commissioners. When she discovered Mr. Scanlon's intentional misdirections, Saundra Brown Armstrong alerted the other Commissioners. They insisted that a new letter be sent, and it was. (See Appendix C)

Misleading and Deceptive Statements and Activities

1. Questionable Behavioral Research of Emergency Room Patients

Consultants hired by the CPSC a year ago to study the agency's data sources told Mr. Scanlon, in response to his inquiry, that subjecting injured consumers in a traumatic hospital emergency room setting to extensive behavioral questions would be unlikely to produce reliable data and would be very annoying to everyone involved. Recently, despite this advice, and without consulting his fellow commissioners who were on record as opposing such unwarranted intrusion into the lives of helpless injured people at a time of distress, Mr. Scanlon authorized expenditures for two pilot studies to ask such questions anyway. Such questions would be about possible intoxication, the extent of product misuse and the like, which may have contributed to the injury. Mr. Scanlon is apparently intent on using an intrusive technique of highly questionable reliability to support his presumption that people, not products, cause accidents and injury.

2. Misstatements about Injury Data.

On March 12, 1985, Mr. Scanlon directed the CPSC General Counsel to draft regulations so the Commission and the public "may know how the Commission determines the accuracy of generic information and what steps have been taken to assure that Commission data is (sic) not misleading." He was angry because of what he called a "one-man consumer alert and virtual press release on Commission letterhead on ATVs" issued by Commissioner

Stewart Statler. He also complained about misleading data previously issued on amusement ride deaths.

Commissioner Statler responded in a memorandum in which he pointed out that the ATV information he used "was excerpted in its entirety from the recent agency briefing materials on ATVs, which were already in the public domain." He also commented, "...you're highly skeptical of any information our staff presents to you; and [yet]. . . highly receptive to any information a regulated company or industry presents to you." Scanlon's colleague then points out that Scanlon's information which he uses regularly on amusement rides is both inaccurate and misleading, and that Scanlon's use of furniture industry information is also inaccurate in ways making the safety records of both industries look better than they are in fact. (See Appendix D)

3. Misleading Testimony on Product Hazard Reports

In his September 10, 1985 statement to the Senate Commerce, Science and Transportation Committee on his nomination, Mr. Scanlon boasts that "I am pleased that the Commission's compliance and enforcement work continues to produce good results." He continued, "In the first six months of 1985 alone, almost as many section 15 product hazards reports from industry have been filed with the commission as were filed in all of 1984. And our product recall actions continue with a similar trend."

What Mr. Scanlon did not reveal to the committee is that just eighteen months ago the Commission adopted new Sec. 15 hazard reporting guidelines for industry which have doubled the voluntary reporting by industry of hazards known to manufacturers. In fact, the various regulated industries have petitioned for revision of the guidelines, and Mr. Scanlon is currently considering activities to support industry concerns.

4. Backdoor Obstruction of CPSC Nomination.

Mr. Scanlon has been associated with scurrilous activities attempting to scuttle the nomination for CPSC chair of Camille Haney, a highly qualified candidate, respected by both the business and consumer community. She was recommended to the post by Senator Bob Kasten, Chairman of the Consumer Subcommittee of the Senate Committee on Commerce, Science and Transportation. Mr. Scanlon is known to have helped prepare a non-byline article for Human Events which condemns Ms. Haney by association and attempts to embarrass Senator Kasten for recommending her. See December 29, 1984 article in Appendix E.

Inappropriate Personnel Actions

1. Demotion By Detail of Bert Simpson, Deputy Executive Director.

Shortly after assuming the chairmanship of CPSC in January 1985, Mr. Scanlon asked the agency's highest ranking civil servant, the deputy Executive Director, Bert Simpson, to take another assignment. Mr. Simpson refused, citing Senior Executive Service rules permitting SES personnel to remain in their posts for a four month period after a new political appointee assumes office, thus permitting SES members to demonstrate their capability to the new boss. In disregard of this clear intent in the law, Mr. Scanlon "detailed" Mr. Simpson to a post for which he was not qualified because he lacked the requisite scientific background. Mr. Simpson appealed to the Office of Personnel Management then headed by Mr. Donald Devine. The OPM upheld the questionable personnel action. But what OPM did not know in coming to this decision is that, in the days just before and just after assuming the chairmanship, Mr. Scanlon told several people that he wanted "to dump Bert". A detail with this intent in mind in the first four months after assuming the Chairmanship is not permitted.

Representative Patricia Schroeder, who is chair of the subcommittee overseeing this law in the House of Representatives, believes the ruse of a "detail" is clearly prohibited by the law and that a new loophole has been improperly carved out by Mr. Scanlon and OPM which now must be closed to ensure SES employees protection from political influence that Congress intended. In a recent letter to Senator Kasten, Representative Schroeder stated:

> Despite considerable political pressures in 1981, the Reagan Administration generally complied with this requirement.
>
> The first major violation of this provision occurred on February 10, 1985, when new Consumer Product Safety Commission Chairman Scanlon involuntarily detailed the highest ranking Senior Executive at the Commission. Mr. Scanlon used the technical distinction between a detail and a reassignment to defend his action. Not only do I find this defense unpersuasive, I believe that circumventing the law in this way seriously undermines the protections contained in the Civil Service Reform Act.

This action has intimidated all personnel in the CPSC who fear that Mr. Scanlon also will deal summarily with them should they disagree with any of his decisions or opinions or disclose scientific facts that do not support his deregulatory industry perspective.

2. Refusal to pay overtime

Contrary to the civil service requirements, Mr. Scanlon was requiring personnel at CPSC to work overtime but refused to pay them for it. After complaints were lodged, he relented because his action was clearly illegal.

In summary, I believe the facts listed in this letter clearly warrant a full-scale investigation of Mr. Scanlon's character and suitability for an official post in the government, especially one of such critical importance to the American people. I reiterate my request made to your staff Counsel that the Committee take needed precautions against any harrassment of CPSC personnel or other government personnel who might possibly be questioned in the Committee's potential inquiry into these matters.

A comprehensive investigation should be conducted by the Committee itself and should secure testimony taken under oath in response to subpoena so as to protect the highly vulnerable CPSC staff and other sources. Such an investigation will corroborate the matters set forth in this letter, and conclusively demonstrate that Mr. Scanlon is unfit for Senate confirmation to chair or serve on the CPSC.

Thank you for the opportunity to respond further to the committee.

Sincerely,

Joan Claybrook

Joan Claybrook

APPENDIX A

The Senate Committee on Commerce, Science and Transportation has carefully reviewed the activities of other nominees to serve on independent regulatory commissions for possible conflicts with their duties. The critical questions raised in prior cases concern whether the activity involves a significant expenditure of time, as well as whether it is for a non-profit organization and is in the nature of a vocation. Noncompensated voluntary service has been found to be prohibited. Mr. Scanlon is significantly involved in leadership positions in a number of right-to-life organizations which may conflict with the proscriptions of Section 4(c) of the Consumer Product Safety Act (15 U.S.C. 2053(c)).

This question is raised in light of Mr. Scanlon's memberships as delineated in his biography distributed at his nomination hearing on September 10, 1985, namely:

D.C. Right to Life Committee
Member, 1975 - present
Treasurer, 1978 - present

D.C. Right to Life Educational and Defense Fund
Vice-President, 1980 - present

March for Life Education and Defense Fund, Washington, D.C.
Vice-President, 1980 - present

Combined Federal Campaign, Washington, D.C.
National Eligibility Member 1982-1984 (Not representing CPSC) (committee now terminated)

The Office of Legal Counsel of the Department of Justice has had occasion to review Section 4(c) of the Consumer Product Safety Act and similar statutory restrictions in certain other regulatory agency statutes. In finding that an individual named to be a CPSC commissioner could not serve (even on an uncompensated basis) as an associate pastor of a church, the Justice Department stated,

> The Supreme Court has stated that one of the justifications for establishing regulatory commissions comprised of members having a fixed statutory term is to foster independence and to enable members to develop expertise during their tenure. *Humphrey's Executor v. United States*, 295 U.S. 602, 625-26 (1935). Limiting outside activities of members, whether compensated or not, is consistent with this purpose.
>
> Our conclusion that the prohibition in 15 U.S.C. sec. 2053(c) *applies to uncompensated outside activities* also finds support in the fact that the President is authorized to remove any Member of the Consumer Product

> Safety Commission 'for neglect of duty or malfeasance in office.' This section too reflects a concern that Members not be distracted from their official responsibilities. (emphasis added). See Appendix F.

Another Department of Justice opinion construing a similar restriction involving a Commissioner nominated for the Federal Trade Commission makes crystal clear that compensation is not the issue, but attention to duty is. The advisory states:

> ...[B]ut on the basis of our more recent examination of these statutes, we are inclined to believe that the absence of compensation should not be thought controlling. The matter of compensation has no bearing on the central purpose of the prohibition, as indicated by the 1902 and 1924 opinions of the Attorney General, of *ensuring that the appointee's attention is focused exclusively on the duties of his office.* We recognize that some of the independent agencies have construed that comparable provisions in their organic acts in a way that would allow teaching, even for compensation. The Federal Trade Commission would adopt that construction here.
>
> But in the present circumstances, we feel constrained to abide by this Department's earlier interpretations of similar statutes (emphasis added). See Appendix G.

In another case, the Department of Justice found that service on the Board of Trustees of a college by a commissioner renominated for the CPSC did not constitute engaging in a "business, vocation, or employment" within the meaning of section 4(c). The factors considered in this decision were that the organization was non-profit, that service on the Board was not in the nature of a "vocation", and that service *did not involve a significant expenditure of time* which might interfere with official duties. See Appendix H.

There is a need for clarification on how the criteria listed in this last Justice Department letter would apply to the three membership and officer positions Mr. Scanlon holds in the "right-to-life" movement, and to his participation in the controversial effort of the National Eligibility Committee of the Combined Federal Campaign to remove Planned Parenthood from eligibility for receiving donated funds from civil servants. At a minimum, Mr. Scanlon's various activities raise questions as to the degree these outside interests impose upon his official responsibilities and prevent his attention from being "focused exclusively on the duties of his [CPSC] office."

Mr. Scanlon's outside activities might also conflict with the Commission's Employee Standards of Conduct. These rules provide guidance for employees on the subject of membership in organizations and professional societies at 16 CFR 1030.408. These regulations are meant to permit employees, where appropriate, to be members of public service, civic or similar appropriate, to be members of public service, civic or similar organizations and to be elected or appointed to positions in such organizations. But, the regulations specifically provide that:

> (b) Employees shall avoid any real or apparent conflict of interest in connection with such membership. For example, they must not:
>
> > (1) Directly or indirectly commit the Commission on any matter;
> >
> > (2) Permit their name(s) to be attached to documents, the distribution of which would be likely to embarrass the Commission;
> >
> > (3) Serve as representatives of such organizations in dealing with the Government;
> >
> > (4) Bring any claims or proceeding before a federal agency or against the Federal Government in a court of law on behalf of the organization;
> >
> > (5) Offer their views as the official views of the Commission unless the Commission has officially stated it views on a particular matter through an official commission vote.
>
> (c) In undertaking any office or function beyond ordinary membership in a professional association, a Commission employee must obtain advance approval from the Ethics Counselor in any situation in which the responsibilities as an officer would create a real or apparent conflict of interest with the responsibilities as a Commission employee (emphasis added).

If Mr. Scanlon has used his name, title, and/or Commission facilities, staff or resources in support of his outside memberships and leadership offices within those organizations, this might well constitute "distribution of a document which would be likely to embarrass the Commission. In addition, his representation on the National Eligibility Committee could have violated Subsection b(3).

APPENDIX B

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

In re: Halting Further Sale and)
Distribution of Accordion-Style)
'V'-Shaped Wooden Baby Gates)

DISSENTING OPINION OF
COMMISSIONER STUART M. STATLER

Rather than dissenting from a particular decision, I am expressing disapproval of the Commission's demonstrated reluctance to back its enforcement staff in seeking to halt the manufacture and sale of dangerous accordion-style, 'V'-shaped wooden baby gates. As a result, over the last two months as many as 50,000 more of these unsafe gates may have made their way into the marketplace and American homes, thereby presenting a strangulation risk that will be with us for years to come. Specifically, youngsters' heads and necks get snared in the 'V' openings at the top of these gates, and in the diamond-shaped openings below. I refer to a series of actions, including the Commission's most recent vote of January 9, 1985, which needlessly delayed a cessation of all further manufacture and distribution. Altogether, these actions allowed a known serious hazard to be perpetuated.

This unfortunate saga had its beginnings back in 1981 when agency staff detected a pattern of hazards associated with accordion-style baby gates and circular enclosures. The industry as a whole was put on notice of the lethal entrapment risk as early as the summer months of 1981 when Commission investigators visited their premises. In the spring of 1982, bowing to a 1981 mandate from Congress to defer wherever possible to voluntary industry action to correct a hazard, the Commission -- in an action I joined in but now regret -- deferred any effort to ban further production of these gates. Instead, the Commission accepted the verbal commitments of this industry to promptly address the risk through an industry-wide voluntary standard with a view toward preventing this lethal entrapment hazard from claiming any more unsuspecting young victims.

Notwithstanding that assurance, the resolve was just not there. Progress on this voluntary standard was tardy in the extreme. The industry began getting together in late May of 1982, yet the standard still is not completed, with several more months anticipated. The price for this delay has been excessive. When the process began, CPSC was already aware of 16 incidents (including 6 deaths) to young children between 9 months and 2½ years of age whose heads or necks became entrapped. Since then, at least 2 more children that we know of have died from these gates and another 15 endured near-misses.

While executives of the firms dragged their feet, no company demonstrated either sufficient concern or economic vision to take the initiative to correct its own product and render it safe. None modified its product to eliminate the lethal risk. Correction by any one firm would have exhibited corporate responsiveness of the kind to which the American public is entitled. Even from the standpoint of economic self-interest, correction could have limited a company's exposure to further liability and at the same time rewarded the conscientious firm with a technology to market to the other companies.

But no one did that. Each continued to market a product they knew to be unsafe -- a product that had already resulted in deaths and near-deaths. Each continued to produce as if, perchance, the hazard might suddenly go away on its own. It didn't.

Over the years, this Commission has witnessed both conscientiousness and the lack of it by various parties we regulate in the face of a known hazard. Some firms and some whole industries have shouldered their responsibilities and sought safety fixes *while working out the details of an industry-wide standard*. For example, the entire array of firms making chain saws immediately introduced into production low-kickback chain and bar combinations, or chain brakes, that were spawned *during* a prolonged standard-setting process. They didn't sit back and wait until the admittedly cumbersome proceeding was completed. Both features serve to reduce the risk of sudden, rearward bucking of the chain saw which is responsible for some 30,000 serious injuries annually.

Similarly, the kerosene heater industry chose to deal with acknowledged hazards *as they were identified* by CPSC staff by *immediately incorporating* new safety devices. To their credit, individual firms and the industry as a whole introduced discrete safety measures to deal with the risks of fire, surface burns and pollutants, while providing much improved labeling and safety information, *well in advance of completing work on an industry-wide standard*.

Not so the folks who bring us accordion-style baby gates.

More than two full years after they were given the problem to solve on their own -- as they sought and verbally committed themselves to -- yet another death of an infant occurred. This time in Meridian, Idaho, on October 4, 1984. The victim was an 11-month old boy. Ironically, the very first incident now known to the CPSC also occurred in Meridian back in 1975. Then it was a near-miss; this time the family was not so fortunate.

As a result of the latest incident and the fact that the dangerous 'V' designs were still being foisted on unsuspecting parents, CPSC enforcement staff sent a letter in early November 1984 to the six known manufacturers of accordion-style gates urging that production cease without further delay. The letter brought results. Five of the six firms either stopped production and sale or indicated that a halt was imminent. Had the Commission moved then to bolster this staff action -- or had we done nothing more -- production and distribution of these unsafe gates would have stopped ...for good.

Instead, the Commission chose to meddle. Questions were raised concerning the authority of the staff to write such a letter and whether the Commission should urge a voluntary cessation. The industry somehow learned of the Commission's indecision and began backtracking. Delay followed delay while the Commission waited to schedule and then reschedule a briefing and a vote. The Holiday Season came and went without a decision. Meanwhile, production and distribution of the gates resumed and just kept rolling along, with the Commission standing aside just watching and waiting.

Finally, on January 9, 1985, the Commission met and churned out a decision. It set January 31, 1985, instead of an earlier date, as the cut-off for production and distribution of these gates. After January 31, the agency's enforcement staff is authorized to pursue appropriate action to prevent further risk.

This date was picked as a sop to two very small gate manufacturers who simply refused to comply with an earlier termination, to which the rest of the industry had already agreed. Each alleged business difficulties -- namely, that they still had inventory left over. And the Commission acquiesced.

But by coddling these two recalcitrant firms, the Commission in effect is rewarding renegades and penalizing more responsible corporate behavior. Three companies had stopped all marketing as of December 31, 1984. Why should they be competitively disadvantaged -- not to mention youngsters' lives further jeopardized -- by the unresponsiveness of the minority?

In the future, will our enforcement staff be able to effectively negotiate with firms or industries on diverse safety matters if staff efforts are not backed by the Commissioners? How will the Commission itself be able to push for prompt industry action to address serious risks if our track record reflects kowtowing to the whims of companies who callously refuse to face up to their public responsibilities?

Most critical is the likely fallout to the American public: in this instance, helpless toddlers and those who watch over them. The Commission's waffling in this matter means some firms will still be producing and distributing dangerous accordion-style gates through the end of January 1985, some 2½ months beyond the early November date for cessation that was in-hand. If, in the years ahead, even one more such 'V'-shaped gate causes a child's death as a result of this belated cut-off, who's to blame? Whose interest was served?

After all, baby gates are bought and used because of their safety function in protecting children from falling down stairs or roaming at will in areas which may not be kid-proofed. When a device explicitly marketed for safety has so clearly itself been identified as a hazard, it is even more compelling that a fix be instituted as soon as possible, especially where, as here, the hazard is not apparent to the user. Parents expect that these gates will protect their youngsters; they don't expect, or even have an inkling, that these very same gates can kill their youngsters so silently and so swiftly.

Compounding the tragedy is the fact that, all this time, other styles of gates -- durable mesh, plastic, vertical-slatted and the like -- have been available as handy alternatives to fulfill the same safety role as the accordion-style gates, and at comparable cost.

In sum, in the first instance the Commission should have supported its staff back in November 1984 by acting with dispatch, not delay. Failing that, the Commission should have responded in a manner that acknowledged the actions of those firms who, albeit belatedly, agreed not to introduce hazardous gates into the marketplace as of December 31. Instead, the Commission slighted them by permitting their competitors to eke out every last bit of profit from left-over inventory of a product they knew to be dangerous and, in the process, we overlooked the best interests of the public whom we are mandated by law to protect.

January 17, 1985

Stuart M. Statler
Commissioner

APPENDIX C

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

January 31, 1985

MEMORANDUM

TO : Terrence Scanlon
Chairman

FROM : Saundra Brown Armstrong
Vice Chairman

SUBJECT : Letter dated January 31, 1985, to DEHP CHAP

As we discussed on the telephone this afternoon, I am disturbed by the contents of the letter dated January 31, 1985, that you sent to the members of the Chronic Hazard Advisory Panel (CHAP) on DEHP on behalf of the Commission. Although purporting to reflect the decision of the Commission reached on January 30, 1985, the letter differs materially from and does not reflect the Commission decision with respect to the focus of the DEHP CHAP. In fact, the letter contains statements about the "mission" of the CHAP that were exhaustively discussed and expressly disapproved by the Commission.

As you may recall, the Commission met on January 30 to discuss the DEHP CHAP, the information to be made available to the CHAP, and the scope of the "charge" to the CHAP. In the course of that discussion, and as reflected by unanimous vote, the Commission expressly rejected an attempt to narrow the focus of the CHAP to DEHP in children's products. Following guidance from the Office of the General Counsel, the Commission determined that such a limitation might interfere with the Commission's ability to transfer the findings of the CHAP from children's products to other products used by the general population or, at a minimum, might open to legal challenge on procedural grounds any regulatory action taken with respect to DEHP-containing consumer products used by the general population. To negate this possibility, the Commission decided not to change the focus of the CHAP.

The focus was — and remains — on the chemical substance DEHP, wherever found in any consumer product, whether that product is used by adults or children.

Your letter of January 31 contains the following statements, which are directly contrary to the Commission's decision of January 30 (copy of the January 31 letter is attached):

1. Page 1, paragraph 2: The "mission" of the DEHP CHAP is to review data relating to a risk of cancer, birth defects, or gene mutations "from exposure to DEHP in children's products" (emphasis supplied).

2. Page 1, paragraph 2: If the CHAP determines that "DEHP found in such [children's] products" (emphasis supplied) presents such a risk, the CHAP is to estimate (if feasible) the probable harm to human health from exposure to the substance.

In addition, your concluding statement that you hope the CHAP can assist the Commission "in deciding whether DEHP found in such [children's] products" warrants regulatory action further compounds and solidifies the impression that the CHAP is limited to DEHP in children's products.

As I understand the matter, this letter differs substantively not only from the Commission's decision, but also from the letter drafted by the staff of Health Sciences and approved by the Office of the General Counsel (copy of the draft letter is attached). Based on conversations with the staff, it appears that none of the staff of Health Sciences or OGC involved in this matter was allowed to review the final letter before it was delivered to the members of the CHAP. Staff members with whom I spoke expressed concern about the statements made with respect to the scope of the CHAP's inquiry, as well as the legal impediments they may present to our future use of the CHAP's determinations.

I am concerned that the members of the CHAP (and members of the public who read it) will construe your letter as conveying a formal Commission decision to alter the focus of the CHAP by restricting its considerations to DEHP in children's products. This was, of course, not the decision made by the Commission.

Therefore, to avoid any possible misunderstanding and to assure that the Commission's direction with respect to the scope of the CHAP's inquiry is clearly understood by members of the CHAP and the public, I believe it is imperative that, on behalf of the Commission, you send a letter to the CHAP members (to be hand-delivered during the session scheduled to begin at 9:30 a.m. on February 1, 1985) clarifying the record with respect to the Commission's action of January 30, 1985.

Attachments

cc: Commissioners
Dr. Andrew G. Ulsamer, Health Sciences
Martin Katz, General Counsel

[illegible]
[illegible]

January 31, 1985 [illegible]

Dear Chronic Hazards Advisory Panel Members:

On behalf of the U.S. Consumer Product Safety Commission, I want to extend my congratulations to you for your selection as members of the DEHP Chronic Hazards Advisory Panel and to welcome you to the panel's first meeting.

As you know, your panel is being convened pursuant to statutory provisions contained in the Consumer Product Safety Act. Your mission, as established by the statute and further amplified upon in the attached Federal Register notice of December 22, 1983, is to review all scientific data and other relevant information relating to a risk of cancer, birth defects, or gene mutations from exposure to DEHP in childrens' products, such as pacifiers, squeeze toys, plastic baby pants and the vinyl fabric covering of playpen pads or similar articles. If, after completion of this review, your panel should determine that DEHP found in such products is a carcinogen, mutagen, or teratogen, your panel should, as provided in the statute and stated in the Federal Register notice, include in your report an estimate, if such an estimate is feasible, of the probable harm to human health that will result from exposure to the substance.

In order to help ensure that the statutory requirements are met, the Commission, in a meeting held January 30, 1985, decided to request your panel to consider the following three questions in addition to the eleven enumerated in the Federal Register notice:

- Whether the available exposure information is adequate to permit the the panel to estimate, if an estimate if feasible, the probable harm to human health that will result from exposure to the substance.

- If such an estimate were made, what methodologies were used in estimating the magnitude of risk and what was the rationale for adopting that methodology.

- If such an estimate is made, are there uncertainties involved in the estimate.

Additionally, I have asked the staff to make available to the DEHP CHAP for your review and consideration the Food and Drug Administration audit of the Inhalation Toxicology Research Institute (ITRI) study and the Arthur D. Little report to the Chemical Manufacturers Association of October 1984, which is entitled "Critique of ITRI Report on DEHP Migration From Children's Products and Subsequent CPSC Exposure and Risk Assessments Based on ITRI Findings."

It is my hope that by addressing these questions the Commission will be greatly aided in deciding whether DEHP found in such products provides such significant health risks that regulatory action is warranted.

Finally, may I say the other Commissioners and I wish to express our appreciation for the time and effort you are expending to assist us in this matter. Please accept our best wishes.

Sincerely,

Terrence Scanlon

Terrence Scanlon
Chairman

Enclosure

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON D.C. 20207

The Chairman

February 1, 1985

Dear Chronic Hazard Advisory Panel members:

On behalf of the Commission, I wish to correct a possible misimpression concerning the scope of this CHAP's inquiry into DEHP.

While children's products are the Commission's primary concern at this juncture, the Commission convened this CHAP to focus on the chemical substance DEHP in consumer products. Nothing, of course would preclude the CHAP from considering any and all studies or data available with regard to DEHP in reporting to the Commission as to the risk presented by the substance DEHP.

We hope that this clarifies the scope of the CHAP and eliminates any possible misunderstanding in this regard.

Again, the other Commissioners and I wish to express our appreciation for the time and effort you are expending— and will expend over the coming months— to assist us in this matter. Please accept our best wishes.

Sincerely,

Terrence Scanlon

Terrence Scanlon
Chairman

APPENDIX D

U S CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON D C 20207

March [illegible], 1985

MEMORANDUM

TO : Terrence M. Scanlon, Chairman

FROM : Stuart M. Statler
Commissioner

SUBJECT : "People Who Live in Glass Houses..."

I take it that you didn't care for the fact sheet and accompanying cover memo that I sent out last week seeking to gather additional information from the general public on the use, handling and stability of all-terrain vehicles (ATVs). The fact is, I thought I was following good conservative, deregulatory teachings in getting more information before the public and from the public so that they and we can make a more informed decision concerning the benefits vs. risks of ATVs.

But because you didn't like my action, you now want additional Commission "regulations" covering Section 6(b)(6) of the Consumer Product Safety Act (beyond our current directive on the subject) to prevent any Commissioner from disseminating "inaccurate and misleading data." As a self-confessed "deregulator," your newfound interest in issuing regulations of any kind comes as a shock -- I only wish you were so moved to protect the public in the face of hazards that kill and maim people, and not merely wave the flag for an industry where the safety of its product is called into question.

But on the point you raise, as you're well aware, the material contained in my circular on ATVs was excerpted in its entirety from the recent agency briefing materials on ATVs, which were already in the public domain. To "clear" anew data that was already cleared by all agency Directorates and the Office of General Counsel strikes me as make-work, and ludicrous in the extreme. Besides, it violates the laudable Reagan Administration goal of reducing paperwork, red-tape, and duplication.

But you are correct in observing that Section 6(b)(6) is aimed at ensuring that any information disclosed by the Commission, or any Commissioner, is accurate and not misleading. Of course, "any Commissioner" includes the Chairman. Now I know that, on the one hand, you're highly skeptical of any information our staff presents to you; and on the other, highly receptive to any information a regulated company or industry presents to you. But in keeping with Section 6(b)(6), I'd suggest you check out the latter with as much vigilance and zeal as you do the former.

Because, you see, what an industry tells you, may not always be accurate, or if technically accurate, may be misleading. For example, take the amusement ride folks. They told you that injuries from rides were down in 1983 and on our own NEISS reports ranked 134th "behind dancing, bowling and billiards" in terms of frequency of occurrence. In good faith, I'm sure, you took that cue and ran with it in testimony to Congress, radio and TV interviews, and statements to the press. But what the industry folks forgot to tell you was that 1983 was hardly a typical year; that over the last 7 years injuries from amusement rides have about doubled; that a rising trend was clear; that 34 persons we know of died over the last 5 years on rides and attractions; and that another 12 died just last year in 1984. They also failed to tell you, as our staff tried to, that while the incidence rate was not extraordinarily high, the seriousness of injuries was and that in determining the "unreasonableness" of a hazard this Commission always considers both frequency and severity of injury.

Thus, the amusement ride example which you cite in your memo is probably one of the most egregious cases of a Commissioner -- not staff -- disseminating misleading information to the public in violation of Section 6(b)(6). You were conned into telling the public of a declining trend in amusement ride incidents based on a single year's data. But one year does not a trend make. I guess, therefore, the industry will be disappointed to learn that new figures just in for 1984 show that the number of amusement ride incidents went up from the figure they (and you) are so fond of citing for 1983. I, too, am dismayed by that, but for different reasons -- in my case not because it fails to comport with a preconceived view that I have, but because it demonstrates anew that more Americans are being injured and killed on amusement rides and attractions over which this agency does not have jurisdiction, but should. I'm curious what kind of gloss the amusement ride folks will put on the 1984 figure. But so long as you follow our existing 6(b)(6) procedures, I'm sure you won't fall for that one too.

While we're on the topic of fairness and accuracy, I know how dearly you want to accept verbatim anything the upholstered furniture folks tell you. Heck, you wanted us to close the book on them this year, even though a serious ignition risk persists. But could you tell me whether you cleared, pursuant to Section 6(b)(6), your February 27th speech to the Carpet & Rug Institute? In there you said that "the UFAC program is responsible for more than 90 percent of the furniture sold in the U.S. meeting high smolder-resistant requirements at a cost of over $100 million annually" and that "... (the program is responsible) for lowering the rate of household fires related to igniting furniture by 34 percent."

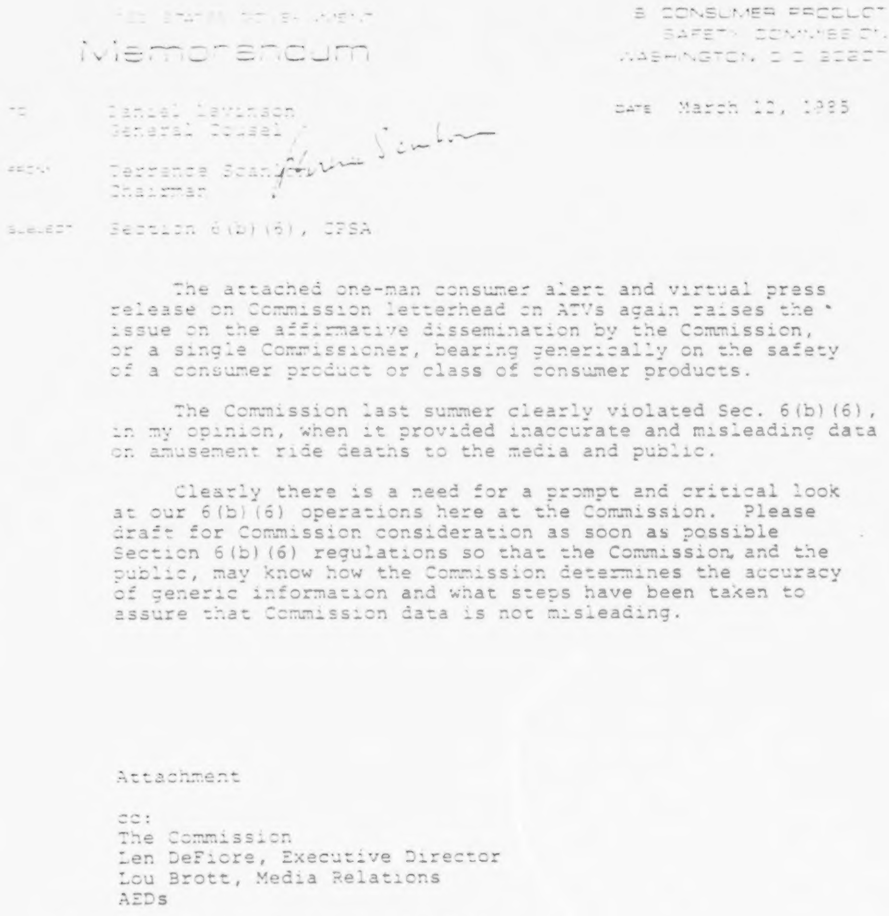
But the facts tell a different story. With all due respect to the yeoman efforts of the furniture industry, thru UFAC, to reduce the likelihood of sofa and easy chairs igniting from a smoldering cigarette, the correct facts are as follows: (1) since 24% of the current UFAC furniture *still* flunks CPSC tests, the figure of 90 percent wouldn't accurately apply to *complying* furniture -- it merely describes the volume of furniture made by UFAC-participating companies; (2) our own Economics staff places the annual cost of UFAC's improvements at $24 million rather than the $106 million figure which the industry for some unknown reason inflates; and (3) while household fires from cigarette ignitions have, fortunately, declined between 1978 and 1983, factors such as highly increased smoke detector use, reduced smoking and changed smoking patterns, and increased consumer awareness of, and responsiveness to the hazard undoubtedly have played a role, *along with the UFAC program*. This last observation *must* be true since the proportion of UFAC-complying furniture to *all* the furniture actually in homes during this period was (and is still) relatively low.

* * * *

To sum up, as fellow Commissioners, on any particular issue we may tend to agree or disagree, or agree to disagree. Based on our experience to date and our diverging views on the role of government in protecting the public against unreasonable hazards, the chances are that we may end up disagreeing often. And we may even cite differing evidence to support our respective positions. For my part, I'll stick to what our own dedicated and professional staff tells us, unless and until I'm convinced otherwise. But it's just not seemly for you to try and take me to the woodpile or gag me because something I tell the public about a product's safety or lack of safety doesn't happen to comport with your view or industry's.

As noted above, if you're sincerely concerned about any inaccurate or misleading statements, you just might want to look within. To thine own self be true.

cc: COMMISSION
Dan Levinson, OGC
Len DeFiore, Executive Director
Lou Brott, OMR
AEDs



UNITED STATES GOVERNMENT
Memorandum

S. CONSUMER PRODUCT
SAFETY COMMISSION
WASHINGTON, D.C. 20207

TO Daniel Levinson
General Cousel

DATE March 12, 1985

FROM Terrence Scanlon
Chairman

SUBJECT Section 6(b)(6), CPSA

The attached one-man consumer alert and virtual press release on Commission letterhead on ATVs again raises the issue on the affirmative dissemination by the Commission, or a single Commissioner, bearing generically on the safety of a consumer product or class of consumer products.

The Commission last summer clearly violated Sec. 6(b)(6), in my opinion, when it provided inaccurate and misleading data on amusement ride deaths to the media and public.

Clearly there is a need for a prompt and critical look at our 6(b)(6) operations here at the Commission. Please draft for Commission consideration as soon as possible Section 6(b)(6) regulations so that the Commission, and the public, may know how the Commission determines the accuracy of generic information and what steps have been taken to assure that Commission data is not misleading.

Attachment

cc:
The Commission
Len DeFiore, Executive Director
Lou Brott, Media Relations
AEDs

Appendix E was not reproducible.

DEPUTY ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

APPENDIX F

Department of Justice
Washington, D.C. 20530

29 SEP 1976

Honorable Frank E. Moss
Chairman, Subcommittee for Consumers
Senate Committee on Commerce
Washington, D. C. 20510

Dear Senator Moss:

This is in response to your letter of September 20, 1976, asking that we reconsider one aspect of our opinion regarding potential conflict of interest problems or other legal impediments to the service of Thaddeus Garrett as a Member of the Consumer Product Safety Commission. Specifically, you question the statement in our September 13 letter to Senator Magnuson that Mr. Garrett's service as an associate pastor of the Wesley Temple A.M.E. Zion Church in Akron, Ohio, "would seem to constitute engaging in another 'business, vocation, or employment,' which is prohibited by 15 U.S.C. § 2053(c)."

Mr. Garrett has informed us orally that he has regular responsibilities as associate pastor, including officiating at church services on two or three Sundays each month and at occasional wedding and funeral ceremonies on Saturdays or Sundays. Such activities by an ordained minister -- which Mr. Garrett is -- seem to us to constitute engaging in a "vocation" within the ordinary meaning of that word. They are the type of activities, for example, of which many persons make a professional career. We do not believe that 15 U.S.C. § 2053(c) is nevertheless inapplicable in the present context merely because Mr. Garrett receives no compensation for his work.

The Committee reports and debates on the Consumer Product Safety Act of 1972 are silent as to the legislative purpose in prohibiting Members from engaging in any outside business, vocation, or employment. This provision was first contained in draft legislation submitted in 1970 as part of the Final Report of the National Commission on Product Safety, which was established to study the need for Federal legislation in the area. See Hearings on the Consumer Product Safety Act before the Subcommittee on Commerce and Finance of the House Interstate and Foreign Commerce Committee, 92d Cong., 1st & 2d Sess. 319, 503 (1972). The Final Report contains no discussion of the recommended provision, and it was apparently adopted without question by the Congress in the legislation that was finally enacted. Any analysis of legislative intent must therefore be speculative and, indeed, somewhat artificial.

The prohibition in 15 U.S.C. § 2053(c) was no doubt borrowed by the National Commission from comparable provisions in statutes governing other independent regulatory agencies. See, e.g., 15 U.S.C. § 41 (FTC); 16 U.S.C. § 792 (FPC); 47 U.S.C. § 154(b) (FCC); 49 U.S.C. § 11 (ICC). Unfortunately, there are no published opinions construing these provisions which might be of help here.

We have not undertaken an exhaustive study of the legislative history of these earlier statutes, although we did unearth a statement in the Senate debates concerning the comparable provision in the Interstate Commerce Act, which was apparently the grandfather of them all, to the effect that Commissioners were to have "no other business . . . thus necessitating . . . an income limited to the amount named in the bill." 17 Cong. Rec. 3477 (1886). We do not read this to mean that limiting a Commissioner's income to his authorized salary is necessarily the only purpose of the ICC provision, however. For one thing, it does not even effectively limit a Commissioner's income to his Government salary, because Commissioners may still receive income from securities of companies not regulated by the ICC. 49 U.S.C. § 11. In any event, we do not attach much significance to this fleeting reference in the legislative history of an essentially unrelated act passed almost 90 years ago in view of the fact that there is no indication that later Congresses, including that which passed the Consumer Product Safety Act, ever gave any thought to the precise meaning of the prohibition. We think it equally if not more plausible that those who voted for the later provisions, and perhaps even the ICC provision as well, believed that members of independent regulatory commissions should be prohibited from engaging in any outside business, vocation, or employment in order to minimize professional diversions and thereby to focus their energies on official duties. Under this interpretation, even uncompensated outside activities of such a nature must be prohibited, since they too might detract from a member's performance of his official duties.

The Supreme Court has stated that one of the justifications for establishing regulatory commissions comprised of members having a fixed statutory term is to foster independence and to enable the members to develop expertise during their tenure. Humphrey's Executor v. United States, 295 U.S. 602, 625-26 (1935). Limiting outside activities of members, whether compensated or not, is consistent with this purpose.

Our conclusion that the prohibition in 15 U.S.C. § 2053(c) applies to uncompensated outside activities also finds support in the fact that the President is authorized to remove any Member of the Consumer Product Safety Commission "for neglect of duty or malfeasance in office." 15 U.S.C. § 2053(a). This section too reflects a concern that Members not be distracted from their official responsibilities.

Finally, we have been advised on an informal basis by several of the other independent regulatory agencies that the matter of compensation would not be regarded as controlling in determining whether outside activities by members would violate comparable prohibitions against engaging in any other business, vocation, or employment. In fact, we were informed that a member of one such agency who also happened to be a minister was orally advised under circumstances quite similar to those involved here that he should cease servicing his congregations when he became a member, and we understand that he did so.

The conclusion that uncompensated services are covered seems quite sound if reference is made to some of the other situations in which the issue could arise. We assume that there would be agreement, for example, that a Member of the Consumer Product Safety Commission would be prohibited by 15 U.S.C. § 2053(c) from devoting his weekends to practicing law without compensation for a local legal services organization or teaching or consulting on a regular basis for free. In our view, the same rule should apply to the ministry.

Sincerely,

Leon Ulman
Deputy Assistant Attorney General
Office of Legal Counsel

DEPUTY ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

Department of Justice
Washington, D.C. 20530

APPENDIX G

Honorable Howard W. Cannon
Chairman, Committee on Commerce,
  Science, and Transportation
United States Senate
237A Russell Senate Office Building
Washington, D. C. 20510

Dear Mr. Chairman:

We have been advised that your Committee wishes the opinion of this Department concerning potential problems under the Federal conflict of interest laws or other legal impediments to the service of Mr. Robert Pitofsky as a member of the Federal Trade Commission, the position for which he has been nominated. We are pleased to respond.

The significant conflict of interest statute of general applicability involved here is 18 U.S.C. § 208(a). It provides, under penalty of criminal sanctions, that an officer or employee of the Executive Branch or an independent agency of the United States may not participate personally and substantially in a particular matter in which, to his knowledge, he, his spouse, minor child, or organization in which he is serving as an officer, director, trustee, partner, or employee has a financial interest, unless the officer or employee first obtains an appropriate exemption pursuant to 18 U.S.C. § 208(b). In addition, 15 U.S.C. § 41 provides that a Commissioner "shall not engage in any other business, vocation, or employment."

We have been furnished with a copy of the financial and biographical materials Mr. Pitofsky has submitted in connection with his nomination. From those materials it appears that Mrs. Pitofsky owns 490 shares of Savannah Bank & Trust common stock valued at $11,000 and that she and the Pitofskys' children own 95 shares of American Telephone & Telegraph common stock valued at $6,000. The Pitofskys' son David also owns 20 shares of Sears stock worth $500 and their daughter

Elizabeth owns 10 shares of International Telephone & Telegraph stock worth $300. We understand that it is unlikely that matters involving Savannah Bank & Trust or AT&T would come before the Commission. It would be necessary for Mr. Pitofsky to disqualify himself from matters involving ITT and Sears, although we note, in view of the value of the holdings, that 18 U.S.C. § 208(b)(1) provides that a given financial interest may be exempted from the disqualification requirement if the official responsible for appointment determines that the financial interest is not so substantial as to be deemed likely to affect the integrity of his services.

The Pitofskys' remaining assets consist of cash, their personal residence, automobiles and other personal property, Mrs. Pitofsky's beneficial interest in a trust the sole asset of which is real property in Atlanta, Georgia, and the Pitofskys' entitlements under the TIAA - CREF Pension Retirement Plan System. None of these assets would appear to create a potential for a conflict of interest under 18 U.S.C. § 208(a).

We note that Mr. Pitofsky proposes to teach a course at the Georgetown University Law Center during academic year 1978-79 and receive the normal salary for an adjunct professor. As mentioned above, 15 U.S.C. § 41 provides that a member of the Commission shall not engage in any outside business, vocation, or employment. The Deputy General Counsel of the Federal Trade Commission has advised the Committee of his conclusion that Mr. Pitofsky's teaching for compensation would not be in violation of this section, although he points out that there have been apparently conflicting interpretations of 15 U.S.C. § 41 by the Commission in the past with respect to teaching and that other agencies having similar prohibitions in their organic acts have not applied the prohibitions in a uniform fashion. An examination of the Department's past interpretations reveals some inconsistency as well, but we believe that Mr. Pitofsky's proposal does raise a question under the statute.

In a 1902 opinion, Attorney General Knox concluded that a member of the Board of General Appraisers who was barred by statute from engaging "in any other business, avocation, or employment" was not thereby prohibited from being detailed without compensation as an expert to represent the United States in certain international negotiations. Attorney General Knox stated that the "language means, of course, that general appraisers shall give their whole time to their public duties, and shall not be engaged in any private occupation; and it means, in connection with other provisions of the law, that they cannot hold another *office* under the Government or be engaged in other incompatible Government service." 24 Op. A.G. 12, 15 (1902)(emphasis in original). However, Attorney General Knox did not believe that the statute should be construed to prevent the appraiser from performing the important public service for which he was uniquely qualified, at least if the exigencies of customs activities did not require his "unremitting attendance" to the duties of the Board. *Id*.

An unpublished opinion of the Attorney General to the President in 1924 considered the application of a similar restriction applicable to members of the United States Tariff Commission to activities in the private sector, as distinguished from the type of public service involved in the formal Attorney General's opinion just discussed. The member of the Tariff Commission lectured twice a week at Georgetown University and was also an administrative officer and a member of the executive faculty of the school. He received $800 for his services as a lecturer. The Attorney General stated:

> . . . [T]here can, in my opinion, be no reasonable doubt but what the commissioner, by the activities in which he is stated to have been engaged, has violated the literal meaning of the statutory prohibition. To deny that a member of the Tariff Commission who is engaged in delivering lectures in a university twice a week during an academic year of eight months, at a fixed annual salary, is engaged in an employment and that he is actively so engaged, is to deny the plain and unambiguous meaning of the terms employed. One who renders service at regular intervals for a definite term and for compensation, is actively engaged in an employment, and such employment is expressly prohibited to members of the Tariff Commission by the terms of the statute.

This conclusion found support in the history of the particular provision, which indicated that Trade Commission members were to "give up all other avocations in life and confine themselves solely and exclusively to the performance of the duties and functions of their office." Moreover, the opinion emphasized that actual interference with the performance of official duties was not an essential element of a violation of the prohibition:

> Had it been the purpose of Congress to prohibit only such other employment as would interfere with or be inconsistent with the performance of the duties of the commission, it would have been easy to say so in the appropriate language, but it is more reasonable to suppose, especially in view of the language adopted that Congress, in pursuance of the sound public policy, intended to remove the question of interference with public duty or other employment from the field of controversy and debate and to withdraw members of the commission from the exposure to the temptations and embarrassments which might result from the allegiance to divergent interests in occupations or employments other than those of the commission by prohibiting members of the commission from every other active employment.

Although the 1924 opinion dealt with a different statute, the substance of the prohibition was the same as that currently embodied in 15 U.S.C. § 41, and the rationale of that opinion

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*/ The opinion was not published as a formal opinion of the Attorney General, but it is reprinted in the transcript of the Hearings before the Senate Select Committee on Investigation of the Tariff Commission held on May 10, 1926, at pp. 547-550.

would appear to apply equally to Mr. Pitofsky's proposal to teach at Georgetown for compensation.

In 1967, however, the Office of Legal Counsel advised Professor Stanley Metzger of the Georgetown University Law Center that he could teach a single course on an unpaid basis after he became Chairman of the Tariff Commission. Then-Assistant Attorney General Wozencraft read Attorney General Knox's 1924 opinion narrowly so as to require both regularity of service and compensation to be present before a question arises as to the possible application of the statute. The absence of compensation therefore made the teaching permissible. This office apparently gave similar advice regarding members of other independent regulatory commissions on several occasions in the 1960's and early 1970's.

However, in the three relatively recent letters from this office cited by Deputy General Counsel Norton in his letter to the Committee of June 20, we stressed that the absence of compensation was not determinative on the issue whether a person was engaging in an outside business, vocation, or employment. And in the September 29, 1976 letter concerning the nomination of Thaddeus Garrett, we expressly suggested that the comparable provision applicable to members of the Consumer Product Safety Commission would prevent a member "from devoting his weekends to practicing law without compensation for a local legal services organization or teaching or consulting on a regular basis for free." The reference to uncompensated teaching was, of course, a departure from the position taken by this office in Mr. Wozencraft's 1967 letter and on the several other occasions mentioned above.

On the basis of the prior precedent within this Department, particularly the 1924 opinion of the Attorney General, it appears that the Department has uniformly taken the position that teaching for compensation is prohibited by statutory provisions such as 15 U.S.C. § 41. There is at least some basis for concluding that uncompensated teaching is permissible. But on the basis of our more recent examination of these statutes, we are inclined to believe that the absence of compensation should not be thought controlling. The matter of compensation has no bearing on the central purpose of the prohibition, as indicated by the 1902 and 1924 opinions of the Attorney General, of ensuring that the appointee's attention is focused exclusively on the duties of his office. We recognize that some of the independent agencies have construed the comparable provisions in their organic acts in a way that would allow teaching, even for compensation. The Federal Trade Commission would adopt that construction here. But in the present circumstances, we feel constrained to abide by this Department's earlier interpretations of similar statutes.

Finally, because of his past law practice and affiliations, Mr. Pitofsky states that he intends permanently to disqualify himself from all matters pending at the Commission prior to his confirmation (1) which were initiated by or pending in the Bureau of Consumer Protection between November, 1970 and January, 1973, when he served as Director of the Bureau; (2) in which he, Arnold & Porter or the Institute for Public Interest Representation (INSPIR) is directly involved; or (3) which involve Federated Department Stores, Kroger, or Xerox. He also intends to disqualify himself for a period of two years from any matters except general rulemaking in which Arnold & Porter or INSPIR participates. Assuming Mr. Pitofsky severs his connections with these entities the disqualification measures outlined above are not required by 18 U.S.C. § 208(a), but we believe them generally to be reasonable from the standpoint of appearances and professional responsibility.

We are not aware of any other potential conflict of interest or legal impediment to the service of Mr. Pitofsky in the position to which he has been nominated.

Sincerely,

Leon Ulman

Leon Ulman
Deputy Assistant Attorney General
Office of Legal Counsel

APPENDIX II

DEPUTY ASSISTANT ATTORNEY GENERAL
OFFICE OF LEGAL COUNSEL

Department of Justice
Washington, D.C. 20530

9 DEC 1977

Honorable Warren G. Magnuson
Chairman
Committee on Commerce, Science
 and Transportation
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

We have been advised that your Committee wishes the opinion of this Department concerning potential problems under the Federal conflict of interest laws or other legal impediments to the nomination of Mr. R. David Pittle for another term as Commissioner of the Consumer Product Safety Commission. We are pleased to respond.

The significant conflict of interest statute of general applicability involved here is 18 U.S.C. § 208(a). It provides, under penalty of criminal sanctions, that an officer or employee of the Executive Branch or an independent agency of the United States may not participate personally and substantially in a particular matter in which, to his knowledge, he, his spouse, minor child, or organization in which he is serving as an officer, director, trustee, partner, or employee has a financial interest, unless the officer or employee first obtains an appropriate exemption pursuant to 18 U.S.C. § 208(b).

In addition, section 4(c) of the Consumer Product Safety Act, 15 U.S.C. § 2053(c), provides that an individual in the employ of, holding any official relation to, or pecuniarily interested in a person engaged in selling or manufacturing consumer products, or pecuniarily interested in a substantial supplier of such a person, may not hold the office of Commissioner. Section 4(c) also provides that a Commissioner "may not engage in any other business, vocation, or employment."

We have been furnished with a copy of the financial and biographical materials Mr. Pittle sent to the Committee in connection with his nomination. From these materials it appears that the assets of Mr. and Mrs. Pittle and their children consist of bank and savings and loan account balances, their personal residence, an automobile, and household items. None of these assets create any potential for a conflict of interest under 18 U.S.C. § 208(a) or 15 U.S.C. § 2053(c).

Mr. Pittle indicates in response to question C.2. of the Committee's questionnaire that he had previously been offered a one-year position as a visiting professor of electrical engineering at Carnegie-Mellon University if he left the Commission upon the completion of his first term. He states that he does not know if the offer would remain open to the end of a second term and that he does not necessarily plan to seek such employment if the offer is open. Under 18 U.S.C. § 208(a), Mr. Pittle would be required to disqualify himself or seek an appropriate exemption pursuant to 18 U.S.C. § 208(b) in any particular matter in which Carnegie-Mellon had a financial interest if he has an arrangement for employment with the University or if he later negotiates for such employment.

Finally, Mr. Pittle states in his answer to question D.6. of the Committee's questionnaire that he is a member of the Board of Trustees of Montgomery College in Rockville, Maryland. We understand that he receives no compensation for his services, other than reimbursement for travel and other expenses, and that service as trustee entails attendance at two meetings per month on the average. We have been informed by the Commission's Office of the General Counsel that the Board meetings are ordinarily held in the evening and that Mr. Pittle as a matter of policy will not attend the rare daytime meetings.

In our opinion, service on the College's Board of Trustees does not constitute engaging in a "business, vocation, or employment" within the meaning of section 4(c) of the Consumer Product Safety Act. Given the nonprofit nature of the organization, membership on its governing board does not constitute engaging in a "business" within the ordinary meaning of the word. Nor would such membership ordinarily be thought of as a "vocation" or "employment" in the sense of pursuing a particular occupation or profession.

We have previously taken the position that the absence of compensation for outside activities does not necessarily render section 4(c) inapplicable, because an apparent purpose of the restriction is to limit the demands on a Commissioner's time that may result from such activities. If membership on the Montgomery College Board of Trustees required a significant expenditure of time, the spirit if not the letter of section 4(c) may be violated. However, we do not believe that such a situation results from attendance at meetings of the Board of Trustees that average two each month and are held in the evening and therefore not during regular business hours of the Commission.

We are not aware of any other potential conflict of interest problem or other legal impediment to the service of Mr. Pittle in the position for which he has been nominated.

Sincerely,

Leon Ulman
Deputy Assistant Attorney General
Office of Legal Counsel

JOHN C. DANFORTH, MISSOURI, CHAIRMAN
BOB PACKWOOD, OREGON
BARRY GOLDWATER, ARIZONA
NANCY LANDON KASSEBAUM, KANSAS
LARRY PRESSLER, SOUTH DAKOTA
SLADE GORTON, WASHINGTON
TED STEVENS, ALASKA
BOB KASTEN, WISCONSIN
PAUL S. TRIBLE, JR., VIRGINIA
ERNEST F. HOLLINGS, SOUTH CAROLINA
RUSSELL B. LONG, LOUISIANA
DANIEL K. INOUYE, HAWAII
WENDELL H. FORD, KENTUCKY
DONALD W. RIEGLE, JR., MICHIGAN
J. JAMES EXON, NEBRASKA
ALBERT GORE, JR., TENNESSEE
JOHN D. ROCKEFELLER IV, WEST VIRGINIA
W. ALLEN MOORE, CHIEF COUNSEL AND STAFF DIRECTOR
RALPH B. EVERETT, MINORITY CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate
COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION
WASHINGTON, DC 20510

September 25, 1985

Honorable Terrence M. Scanlon
Chairman
Consumer Product Safety Commission
1111 18th Street, N.W.
Suite 800
Washington, D.C. 20207

Dear Chairman Scanlon:

Enclosed is a copy of the letter and additional material pertaining to your nomination, which was sent to the Senate Committee on Commerce, Science, and Transportation by Joan Claybrook, President of Public Citizen. Your response to the allegations contained in Ms. Claybrook's letter is hereby requested by the Committee.

Sincerely,

Jack Danforth
John C. Danforth
Chairman

Fritz Hollings
Ernest F. Hollings
Ranking Minority

Enclosure

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON D C 20207

The Chairman

October 2, 1985

The Honorable John C. Danforth
Chairman
The Honorable Ernest F. Hollings
Ranking Minority Member
Committee on Commerce, Science,
  and Transportation
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman and Ranking Minority Member Hollings:

This is in answer to your request that I respond to another series of allegations by Joan Claybrook, President of Public Citizen. In her letter to you, dated September 23, 1985, Ms. Claybrook seeks to further delay your consideration of my nomination.

Again, I observe that Ms. Claybrook supplies no evidence of wrongdoing. Further, I note that of her two broad categories of allegations, one concerns policy and involves an attempt on her part to transform policy differences into examples of wrongdoing. In every case, her leap from policy dispute to inappropriate behavior has no factual or legal basis. These numerous misrepresentations, I would emphasize again, are being made to this Committee by someone who has not participated in, or even witnessed, Commission proceedings during my tenure on the Commission.

The second category of accusations is more personal in nature. Again, as I will explain, none of these allegations has merit. Their tone bespeaks something other than Ms. Claybrook's mere willingness to advance the minority views of one or more Commissioners. These charges constitute a veiled attack on my religious views concerning abortion. I have never permitted my religious views to compromise in any way the obligations, duties and responsibilities of the civil offices I have held.

With these preliminary observations, I now turn to Ms. Claybrook's letter and attachments. She has divided her letter into four segments. I will respond to each in the order in which they were presented.

I.

Ms. Claybrook's first section, entitled "Misuse of Government Property," merely repeats her previous allegations, none of which she has substantiated. I have devoted over twenty years' service to the

Federal Government, throughout which I have consistently taken care to separate my official duties from my personal matters, including the areas of photocopying, secretarial services, mail facilities and my personal finances. I have conscientiously conducted my affairs so as not to abuse the Government resources that have been entrusted to my care. And when, for example, I spoke out against abortion, in my 1984 review of President Reagan's book, "Abortion and the Conscience of the Nation," a copy of which review was previously provided this Committee, I scrupulously dedicated only private time and private resources.

Ms. Claybrook suggests that I may have violated Section 4(c) of the Consumer Product Safety Act by not obtaining advance approval from the agency's Ethics Counselor before joining various right to life groups. I cited these memberships -- and others, ranging from a local school board to the District of Columbia affiliate of the American Red Cross -- in material submitted to this committee considering both my initial nomination to the Commission and subsequent nomination as chairman. As the General Counsel of the CPSC advises me, by no stretch of the imagination could my membership in right to life groups constitute engaging in a "business, vocation or employment" within the meaning of Section 4(c) of the Consumer Product Safety Act. Ms. Claybrook herself supplies a copy of an opinion from the Office of Legal Counsel of the Justice Department which specifically approves participation in a not for profit institution. (See Justice Department opinion, dated December 9, 1977, marked as Claybrook Exhibit H).

II.

Ms. Claybrook's eight allegations of improper action on behalf of companies also are devoid of substance.

In reference to the ATV survey, Ms. Claybrook claims that I "instructed the Executive Director to contact the Office of Management and Budget (OMB), which must clear such surveys, to undermine the position taken by the Commission." Actually, the OMB contact was made prior to the Commission vote cited by Ms. Claybrook. And the request of the Executive Director was made not by me but by Commissioner Dawson who subsequently disagreed with me on the scope of the survey. Obviously, Commissioner Dawson would not seek to undermine her own position.

At the time, I expressed no objection to the solicitation of OMB's reaction to our survey. Let the record show that no other Commissioner did either, including the three members who later disagreed with me and the Commission staff in the Commission vote cited by Ms. Claybrook.

The ATV investigation, including the exposure survey, by design involved extensive dialogue between the CPSC staff and industry representatives. Among the concerns raised by industry was that the information, published by the CPSC in its Advance Notice of Proposed Rulemaking and elsewhere regarding the comparative risks of ATVs, snowmobiles, and dirt bikes, is incomplete, inaccurate and misleading. Industry representatives urged CPSC staff to conduct exposure surveys on the three types of vehicles to complete and make fully accurate its published data and analysis. CPSC career staff agreed that this industry position had merit and opted to do user surveys of all three vehicles (see attachment 1). It was at that point that another commissioner requested the Executive Director to solicit the views of OMB. Subsequently, the Commission voted to override the staff recommendation.

Ms. Claybrook's second allegation, of a "secret meeting" in New Hampshire, is untrue. The meeting which she claims was not listed on the public calendar was listed on the the CPSC's public calendar published July 31, 1985, a copy of which is attached. (See Public Calendar and Meeting log at attachment 2). Waivers of the seven-day notice requirement are appropriate on a variety of grounds and, with the proper showing, are granted on a routine basis.

Ms. Claybrook's third allegation concerning a "secret meeting" with Aaron Locker, counsel to the Toy Manufacturers of America, is a misrepresentation of an innocent encounter in a public hallway. In fact, on September 11, 1985, I was on my way to the Commission's public briefing on petroleum distillates when I saw Mr. Locker standing in the public hallway outside the Commission's public hearing room. Within the course of a few seconds, I said "hello" and complimented him on his suntan. I then proceeded into the public hearing room.

It could only be this brief and chance encounter that so concerns Ms. Claybrook. No "secret meeting" took place, nor would such a meeting, public or private, ever be necessary. I do not consider Mr. Locker a "trusted confidante" of mine. I saw him for a matter of seconds in a public hallway September 11th; I have not met with him since my appointment as Chairman last year.

Ms. Claybrook's fourth allegation consists of a bald and unconvincing narrative intended to elevate to the level of wrongdoing a policy dispute within the Commission concerning a staff request to manufacturers to cease production of V-shaped baby gates. Her "evidence" consists of an opinion from Commissioner Stuart M. Statler "dissenting" from agency actions plainly designed to ensure that CPSC enforcement staff make clear its authority to regulated parties and not usurp the quasi-judicial role of Commissioners. Obviously, I disagree with Commissioner Statler on this issue. But to twist my effort to protect the prerogatives of the Commission into a campaign to help an industry that appears more than adequately represented by compensated counsel, is wrong.

Ms. Claybrook's fifth allegation conjures up a "secret unilateral alteration" of a consent decree, supposedly triggered by a Congressional inquiry. I can simply state that I did not, nor can I, arrange to unilaterally amend consent decrees, either while on vacation or at any other time. Ms. Claybrook is referring to a staff response to a recent request from the counsel for the Emerson Electric Company to clarify the scope of an earlier Consent agreement and Order. A copy of the staff response is attached and, as any lawyer or layman can plainly see, the decree has not been amended. (See attachment 3).

Ms. Claybrook's sixth allegation in which she refers to an alleged meeting with Robert Sussman is not true. Neither my personal staff nor I have had any meeting -- logged or unlogged -- with Mr. Sussman. Nor have we shared restricted briefing packages with Mr. Sussman. I have attached a copy of Mr. Sussman's May 8, 1985 letter to the Associate Executive Director for Compliance and Administrative Litigation (See attachment 4). The only "unavoidable presumption" emanating from that letter is that Mr. Sussman and Compliance staff engaged in candid exchanges of information, a practice which, in this context, is not only legal but is also to be encouraged.

Ms. Claybrook's seventh allegation is that I have delayed action on upholstered furniture fires. Again, this is not true.

After nearly ten years of industry and agency research on furniture flammability, significant progress in this area has been achieved. During 1980-83, cigarette-ignited upholstered furniture fires have decreased 40 percent. Deaths associated with these fires have decreased 25 percent. At this point in our progress, I believe that new avenues of study, including cigarette safety, fire toxicity, and smoke alarm installation, are more likely to achieve significant results than continued emphasis upon furniture flammability, where recent successes strongly suggest that we have reached a point of diminishing returns. It should be self-evident, therefore, that I would be more supportive of these productive activities, not because of a pro-industry bias, but because they make sense.

The allegation of delay is totally inappropriate. The document to which Ms. Claybrook presumably refers concerns a routine status report on voluntary standards work. Much of the time between the initial and final draft was absorbed by the necessity of staff correcting and improving its report, sometimes at the behest of the Executive Director (see attachment 5). Further, I am assured that the Executive Director did not insist "that the staff report conclude that the industry is doing everything it can," as was alleged. Nor did he insist on "no strong recommendations for further action by the industry." (See attachment 6). And, indeed, a comparison of the earlier draft and the final report reveal that the staff recommendations remained substantially unchanged.

Ms. Claybrook's final allegation in this segment seeks to resurrect her earlier charges concerning correspondence to the Chronic Hazard Advisory Panel (CHAP) on the chemical DEHP. I addressed fully the propriety of the circumstances surrounding such correspondence on page 4 of my September 13, 1985 letter to the Committee.

III.

Under the heading of "misleading and deceptive statements and activities," Ms. Claybrook accuses me of annoying people by my efforts to improve the injury data base upon which the Commission acts. As Chairman, it is my goal, and I believe my obligation, to encourage as accurate and complete a data base as possible in order to better identify and deal with potentially defective products as required by law. Improved data collection enhances the agency's compliance efforts under section 15 of the Consumer Product Safety Act (CPSA) and makes its published data more accurate, consistent with section 6 of the CPSA. Accordingly, I asked the Executive Director to explore generally what improvements might be made to the agency's hazard and injury data systems.

The Executive Director, in turn, asked the Associate Executive Director for Epidemiology to design and conduct two pilot studies, each costing less than approximately $2,000. The first pilot study is complete and has promise; the second is still underway. Significantly, neither patient complaints nor reliability problems have surfaced. (See NEISS Report, attachment 8).

Ms. Claybrook's allegations concerning misstatements about injury data are unfounded. I stand by my criticism of Commissioner Statler's nationally-distributed press release on ATVs and reject his allegations of misleading data on amusement rides and furniture. I would add that my concern with Commissioner Statler's position is shared by the ranking minority member of the Subcommittee on Commerce, Consumer, and Monetary Affairs of the House Committee on Government Operations. (See September 6, 1985 letter of Representative Larry Craig, attachment 9).

Ms. Claybrook alleges misleading testimony on product hazard reports. I stand by the facts and figures included in my September 10 testimony before your Committee. Although new guidelines were issued on Section 15 in June, 1984, which I voted for, there is as yet no clear indication whether, and if so to what extent, the guidelines have contributed to increased reporting. Comments on the guidelines have been received from consumer and industry representatives, and informal talks between Compliance staff and these representatives on possible changes to the guidelines have occurred.

Ms. Claybrook's final allegation concerning backdoor obstruction of a CPSC nomination is also incorrect.

IV.

Ms. Claybrook alleges two inappropriate personnel actions. Both are groundless. As a career civil servant for sixteen years before my appointment to the Commission, I am especially sensitive to civil service personnel rules. First, Ms. Claybrook alleges that the detail of Bert "Simpson" (sic) was illegal. She is wrong.

In February of this year, I requested the agency's Deputy Director, Mr. Simson, to assume the duties of Associate Executive Director (AED) for Health Sciences. The incumbent AED for Health Sciences had recently left the agency and it was crucial that an experienced senior manager fill this key position and oversee the operation of this important directorate. When Mr. Simson refused my request, a 120-day detail was directed involuntarily. Under the detail, Mr. Simson continued to officially occupy the position of Deputy Executive Director.

A provision of the Civil Service Reform Act of 1978 prohibits an agency from involuntarily reassigning a career senior executive within 120 days after the appointment of a new agency head. A reassignment, unlike a detail, is non-temporary and the employee retains no vested right in his former position. While Rep. Schroeder dismissed the distinction between detail and re-assignment as "technical," the differences in the two personnel actions have always been considered very important both to managers and their employees. As noted by Sylvester Pranger, a career civil servant and Acting Deputy Director for the Office of Personnel Management, in hearings before the House Committee on Post Office and Civil Service in 1981:

> "The law restricting reassignments for 120 days specifically addresses reassignments. It does not address details. We take the position details are an every-day and necessary occurrence in the Federal Government, especially at a time when we have many vacant key positions throughout the government."

I understand that upon his detail, Mr. Simson filed a complaint with the Special Counsel of the Merit Systems Protection Board making the same allegation as that found in Rep. Schroeder's letter. The Special Counsel's office made an inquiry to the agency's personnel office to learn of the facts surrounding the detail, and pursued the complaint no further. Both the CPSC's personnel office and General Counsel have advised me that the February, 1985, detail of Mr. Simson was fully consistent with all civil service laws, rules, and policies.

Finally, Ms. Claybrook alleges that I have refused to pay overtime. The only situation in the entire Commission about which I am aware occurred when a Schedule C employee in my office raised a concern about overtime. We immediately consulted with the agency's personnel office and corrected the problem.

Ms. Claybrook and I obviously have disagreement with regard to policy issues confronting the CPSC. However, she has not in her appearance before the Committee or in her letter to the Committee of September 23, 1985 -- substantiated her allegations and a conclusion that I should be found unfit to Chair this agency. I offer to assist the Committee in any way possible to bring these proceedings to a quick and satisfactory close.

Sincerely,

Terrence Scanlon

Terrence Scanlon
Chairman

Enclosures

JUL 30 1985

Attachment #1
OS# 4025

UNITED STATES GOVERNMENT
Memorandum

RESTRICTED

U.S. CONSUMER PRODUCT
SAFETY COMMISSION
WASHINGTON, D.C. 20207

TO :The Commission
THRU:Sadye Dunn, Office of the Secretary
THRU:Daniel R. Levinson, General Counsel
THRU:Leonard DeFiore, Executive Director
From:Nick Marchica, Chairman, All-Terrain Vehicle (ATV) Task Force NVM

DATE 30 JUL 1985

Subject:ATV Exposure Surveys

Background

The Commission approved an exposure survey to obtain product and operator characteristics data as part of the ATV action plan. The ATV Task Force completed a draft of the exposure survey on May 17, 1985. On that day it was sent to the Specialty Vehicle Institute of America (SVIA) for comment by June 7, 1985. On June 10, 1985, the ATV Task Force met with the SVIA and American Honda to discuss the draft exposure survey. The meeting log is attached at Tab A. On June 18, 1985, the ATV Task Force received written comments from Heiden Associates, Inc. (for American Honda), Tab B, and written comments were received from the SVIA on June 20, 1985 (Tab C).

The Industry's concerns fall into three areas: (1) A national probability survey is preferred to a panel survey; (2) The survey should be expanded to include comparable exposure and injury surveys for dirt bikes and snowmobiles; and, (3) Behavioral data should be obtained.

The ATV Task Force met with the Executive Director to discuss the industry's comments. The Executive Director requested that the ATV Task Force Chairman discuss with the industry the possibility of conducting panel exposure surveys on ATVs, dirt bikes and snowmobiles. On Friday, July 19, 1985 the ATV Task Force Chairman received American Honda's July 17, 1985 letter response (Tab D), and received a verbal response from the SVIA. Industry supports the concept of conducting exposure surveys for ATVs, dirt bikes and snowmobiles, but strongly recommends that national probability surveys be conducted rather than panel surveys in order to gather the most accurate and statistically valid data possible. The industry also recommended that injury surveys be conducted for dirt bikes and snowmobiles which would be comparable to the injury survey conducted for ATVs.

Panel Survey vs. Probability Sample

Adequacy: Epidemiology has used the Market Facts panel with good results. The panel approach is sufficient for gathering information on ATVs, riders, and how much ATVs are ridden. Other agencies, such as FTC, have used Market Facts for research purposes. A panel survey does not use a probability sample and may therefore have some biases. However, there are no known biases in the Market Facts panel. (Market Facts has a panel of 205,000, and it can develop a sample of 130,000 households balanced by five characteristics to make it representative of the U.S.).

This survey is exploratory and intended to identify possible problem areas. It would not be the sole basis for regulation.

Timing: Market Facts is currently under contract with the Epidemiology Directorate. The panel survey could proceed as soon as the Office of Management and Budget (OMB) approves it. A probability sample would require selection of a contractor and would be conducted later than a panel survey.

Costs: A panel survey of ATVs would cost $50,000 to $65,000, depending on the sample size. Costs for a national probability survey would amount to two or three times those for a panel survey.

Comparative Exposure Studies

The Commission has taken the initiative in comparing ATV injuries with dirt bike and snowmobile injuries. This data was used in the Advance Notice of Proposed Rulemaking, briefing packages, press releases and individual Commissioner's statements. For example, the May 31, 1985 Federal Register states: "The rate of injuries associated with ATVs were nearly double those for mini bikes and trail bikes and more than eight times those for snowmobiles. The hospitalization rate for ATVs is more than twice that of mini bikes and trail bikes. Injuries associated with these other types of vehicles for off-road use have remained about the same from 1983 to 1984, while ATV injuries have increased." The industry has protested the use of this information and has insisted that more "accurate" data be obtained.

The ATV industry support for comparative exposure surveys is very strong. Further, industry's lack of support for the ATV survey if unaccompanied by exposure surveys for dirt bikes and snowmobiles may be a factor in OMB's analysis of the ATV survey.

Alternative sources for comparable exposure data may exist. The Motorcycle Industry Council is currently conducting a probability sample survey of motorcycles, including dirt bikes and ATVs. This survey could provide information on miles driven per year by the respondents.

Behavioral Data

The ATV Task Force's opinion is that the current draft of the ATV exposure survey addresses behavioral issues, some of which were recommended by industry. For example, questions on the following topics are now included:

- The types of performance modifications made to the ATVs.
- The drivers' experience with ATVs.
- Drivers' experience with other motorized recreational vehicles.
- Whether the drivers read the Owners Manual.

- Method by which the drivers learned to operate an ATV.

- Frequency of wearing a helmet.

- Types of protective clothing worn.

- Types of terrain ATVs are driven on.

- Types of non-recreational uses of ATVs.

- Frequency of night driving.

Alternative Survey approaches considered by the staff

There were four major alternatives considered by the staff:

1. Conduct an ATV panel survey;
2. Conduct panel surveys on ATVs, dirt bikes and snowmobiles;
3. Conduct an ATV national probability sample survey;
4. Conduct national probability sample surveys on ATVs, dirt bikes and snowmobiles.

$

TIME

In each of the alternatives described below, the estimated time required to complete the survey refers to the completion of the interview process. The coding~~-of~~ the responses and analysis of the results will require an additional three months.

Variables that might affect the completion date estimates include the time required for industry consultation and the amount of time required to get OMB clearance.

The costs for the national probability surveys below are estimates based on a random digit dialing approach developed by J. Waksberg. This approach entails high screening costs.

1. ATV panel survey

This is the approach initially taken by the ATV Task Force.
The survey questionnaire is prepared and will be transmitted to OMB within two weeks, once the justification is put in final form.
The estimated cost is $50K - $65K depending on the number of people interviewed (500-660). Completion of the survey is estimated in 4-6 months.

2. Panel surveys on ATVs, dirt bikes and snowmobiles

This option addresses the fairness issue cited earlier in the comparative exposure studies section.

a. The ATV survey would be conducted as soon as possible; dirt bike and snowmobile surveys would follow with separate justifications for OMB clearance.

The discussion in 1. above on costs and scheduling apply for the ATV survey. Costs for dirt bike and snowmobiles surveys are estimated at $75K (300-400 interviews) and completion is estimated in 5.5 - 8.5 months. Total cost for all three surveys: $125K - $135K.

b. The ATV, dirt bike and snowmobile survey respondents could be identified and surveyed simultaneously. Estimated cost: $105K, Completion: 5.5 - 8.5 months

3. ATV national probability survey

Estimated cost: $150K-200K (500 interviews)
Completion: 6.5 - 8 months

4. Probability samples on ATVs, dirt bikes and snowmobiles

a. The ATV survey would be conducted as soon as possible; dirt bike and snowmobile surveys would follow with separate justifications for OMB clearance.

The discussion in 3. above on costs and scheduling is applicable for the ATV survey. The costs for the dirt bike and snowmobile surveys are estimated at $225K - $300K and completion is estimated in 5.5 to 8.5 months. Total cost for all three surveys: $375K - $500K.

b. The ATV, dirt bike and snowmobile respondents could be identified and surveyed simultaneously.

(1). 660 ATV interviews; 300-400 dirt bike and snowmobile interviews.

Estimated cost: $250K - $325K
Completion: 8.5 - 11 months

(2). 1000 ATV interviews; 500 dirt bike interviews; 500 snowmobile interviews.

Estimated cost: 400K+
Completion: 8.5 - 11 months.

Expanding the exposure survey to include dirt bikes and snowmobiles would require approximately 4-6 additional staff months for questionnaire development and OMB justification.

In addition, if injury surveys are conducted for dirt bikes and snowmobiles, estimated staff resources required are about 60 staff months for the dirt bike survey (300 injuries (May-September) plus analysis time) and 30 staff months for the snowmobile survey (100 injuries (December-March) plus analysis time).

Status

The staff plans to follow alternative 2a. This alternative entails conducting an ATV panel survey as soon as possible, followed by dirt bike and snowmobile surveys.

We believe that this plan addresses adequately the critical issues of fairness and quality of data. At the same time, it is cost-effective and responsive to the time constraints of the project.

Attachment #2

CPSC
Public Calendar

Volume XII, No. 42

Weeks of August 4 to August 10
and August 11 to August 17
Published July 31, 1985

IN THIS ISSUE:

Meetings Between Commission Staff and Outside Parties .... Page 2

Commission Agendas .... Page 4

Addendum .... Page 4

Public Hearings on ALL-TERRAIN VEHICLES - The Commission will be holding two more hearings on safety related issues concerning All-Terrain Vehicles. The next hearing will be held in Milwaukee, Wisconsin on September 3. This will be followed by a hearing in Los Angeles, California on October 17. Location of these hearings will be announced later. Witnesses interested in testifying in Milwaukee should notify Sheldon Butts, Office of the Secretary, by August 28, 1985, and in Los Angeles by October 10, 1985. You may notify the Commission of your interest in appearing by writing Sheldon Butts, Deputy Secretary, CPSC, Washington, DC 20207 or by calling him on the Commission's toll-free Hotline (800) 638-2772 or on the commercial line (301) 492-6800.

U.S. CONSUMER PRODUCT SAFETY COMMISSION • WASHINGTON, D.C. 20207

Meetings Between Commission Staff and Outside Parties

All meetings listed below are open to the public unless otherwise stated. For information on a specific meeting or to attend a meeting, please call the contact person listed for that meeting.

Abbreviations: we use asterisks (*) to identify meetings for the current week which have not appeared before in the printed Public Calendar. If the meeting involves discussion of a "substantial interest matter," defined by CPSC's Meetings Policy, we show the date when we posted notice of the meeting on the Master Calendar. The Master Calendar is in the Reading Room of the Office of the Secretary. We indicate whether a meeting is of substantial interest by the symbol (S); we use the symbol (N) to indicate non-substantial interest meetings. The Commission offices are located in the Logan Building, 1111 - 18th Street, N.W., Washington, D.C. and the Westwood Towers Building, 5401 Westbard Avenue, Bethesda, Maryland.

Under the Meetings Policy, a staff person holding or attending a substantial interest meeting must file a log of the meeting with the Office of the Secretary within 20 days.

Week of August 4 to August 10

Monday, August 5

Chairman Terrence Scanlon and General Counsel Daniel R. Levinson having lunch at noon with Stephen Brobeck, Consumer Federation of America. For additional information contact Ophelia McCardell, (202) 634-7740. (N)

Tuesday and Wednesday August 6 and 7

* Nick Marchica, Chairman ATV Task Force; Roy Deppa and Jim Bradley, Engineering Sciecnes meeting with The Specialty Vehicle Institute of America to discuss the voluntary standard for ATVs; 9:30 a.m., Westwood Towers Bldg., Room 456. The meeting was requested by The Voluntary Standards Committee. For additional information contact Nick Marchica, (301) 492-6554. (S)

Thomas Cooper, Engineering Sciences, meeting with Z21 Central Furnace Subcommittee to discuss lighting instructions, the review of CPSC IDI's, draft standards for common venting of gas appliances and other items of interest to CPSC, 9:00 A.M. at the Harley Hotel, 17000 Bagley Road, Cleveland, Ohio. The meeting was requested by the Chairman of the Subcommittee. For additional information contact Thomas Cooper at (301) 492-6508. (S)

Thursday, August 8

Commissioner Carol G. Dawson meeting with Dr. Howard Forman, Chairman of ANSI (Z-21) Committee to discuss Gas Appliances; 10:00 a.m., Logan Building, Room 815. The meeting was requested by Dr. Forman. For additional information contact Brenda Hayes, (202) 634-7790. (N)

Lynda Santelli, Engineering Sciences meeting with Helen Bagan of ANSI (American National Standards Institute) publication department to discuss publication details for the chain saw kickback standard; 10:30 a.m., 1430 Broadway, New York, New York. The meeting was requested by ANSI publication department. For additional information contact Lynda Santelli, (301) 492-6494. (S)

FUTURE MEETINGS

Friday, August 16

Robert C. McNally, Office of Program Management meeting with National Kerosene Heater Association to discuss Kerosene Heater Flare-up; 2:00 p.m., Vanderbilt Plaza Hotel, Nashville, Tennessee. The meeting was requested by NKHA. For additional information contact Robert C. McNally, (301) 492-6554.

Monday, August 19

Robert C. McNally, Office of Program Management meeting with the National Chimney Sweep Guild to discuss Wood Heating Equipment Safety; all day, Holiday Inn I-64 West, 6531 W. Broad St., Richmond, VA. The meeting was requested by the National Chimney Sweep Guild. For additional information contact Robert C. McNally, (301) 492-6554. (S)

Tuesday and Wednesday, September 17 & 18

Several CPSC Commissioners and staff members meeting with National Conference on Safety for Older Consumers (sponsored by CPSC and ASTM, with 25 organizations serving as honorary co-sponsors). The objectives of the conference are to help older consumers live more safely and independently with products in their homes, and to explore ways to apply voluntary standards to help reduce deaths and injuries suffered by older consumers in home-related accidents, two full days, at the Holiday Inn, Center City, 18th and Market Streets, Philadelphia, Pennsylvania. The meeting was requested by CPSC and ASTM. For additional information contact Ken Giles, (301) 492-6580. (N) Participants are requested to pay a conference service charge of $30.00. This service charge will be waived for older consumers. Checks and money orders should be made payable to "ASTM Older Consumers Conference" and mailed to: Mae Runner, ASTM, 1916 Race St., Philadelphia, PA 19103, by August 17, 1985.

Sandra Eberle, Health Sciences meeting with the Tenth Industry-Government Conference of the Asbestos Information Asso., North America, to discuss asbestos industry and related health and regulatory issues; 9:00 a.m., Stouffer's Concourse Hotel, Arlington, VA. The meeting was requested by Asbestos Information Association. For additional information contact Sandra Eberle, (301) 492-6957. (S)

Wednesday, October 30

Commissioner Saundra Brown Armstrong meeting with INDA, the Association of the Nonwoven Fabrics Industry to discuss CPSC activities in the area of flammability and combustion toxicity at INDA's Combustion Toxicity Conference, 11:30 A.M. at the Hyatt Regency Crystal City in Arlington, Virginia. The meeting was requested by INDA (Patricia Gleason - 457-1931). For additional information contact Betty McGill at (202) 634-7793. (N)

Commission Agendas

Listed below is the tentative schedule for Commission meetings. Circumstances sometimes require that the Commission make changes in the Agenda prior to the meeting. If you plan to attend a Commission meeting to hear the discussion of a particular item, please call (301) 492-5709 for a recorded message concerning the latest agenda information.

Commissioner Meeting	Third Floor Hearing Room
Wednesday, August 7, 1985	1111 - 18th Street, N.W.
9:30 a.m.	Washington, DC

Open to the Public

1. Chain Saws

   The staff will brief the Commission on staff activities regarding the Chain Saw Project and on the staff recommendation that the Commission terminate its proceeding to develop a standard addressing the risk of rotational kickback.

2. Voluntary Standards Priorities

   The staff will brief the Commission on the methods by which priorities are set for voluntary standards projects.

Addendum

Meeting notices printed in this section did not reach the Office of the Secretary in time to meet the Tuesday noon deadline for the previously printed Public Calendar. Under the CPSC Meetings Policy, however, staff persons, including Commissioners, can meet the seven-day notice requirement by placing notice of the meeting on the Master Calendar at least seven days before the meeting. The Master Calendar is in the Reading Room in the Office of the Secretary.

In addition, the policy allows the Office of the General Counsel to waive the seven-day notice requirement for meetings of the staff personnel, and individual Commissioners can waive the requirement for themselves and their personal staff.

ednesday, June 26

Daniel R. Levinson, General Counsel met with Mark Austrian, Collier, Shannon, Rill & Scott to discuss Section 15 enforcement policy; 12:00 noon, Cafe Sorbet, 1810 K Street, N.W., Washington, DC. The meeting was requested by Mark Austrian. For additional information contact Becky Butler, (301) 492-6980. (S)

ursday, July 25

Leonard DeFiore, Executive Director met with Mel Stahl, Specialty Vehicle Institute of America; Ed Glynn, American Honda; Glenn Parkison, Yamaha; John Walsh, Suzuki and Roger Hagie, Kawasaki for a breakfast meeting in Concord, New Hamsphire to discuss issues related to All-Terrain Vehicles. The meeting was requested by Dr. DeFiore. For additional information contact Nick Marchica, (301) 492-6554. (S) (7-day waiver approved by OGC.)

Monday, July 29

Commissioner Carol G. Dawson met with General Electric Company officials for a breakfast meeting and facility tour; 7:30 a.m., Appliance Park, Louisville, KY. The meeting was requested by Commissioner Dawson. For additional information contact Brenda Hayes, (202) 634-7790. (N)

Friday, August 2

L.J. Sharman, Office of Program Management and P. Fairall, Engineering Sciences meeting with Upholstered Furniture Action Council Technical Committee to discuss flammability of upholstered furniture; Civiv Center, Charlotte, NC. The meeting was requested by J. Ziolkowski. For additional information contact L.J. Sharman, (301) 492-6554. (S)

AUG 1 1985
Cleared:
No Mfrs. Identified
X Excepted
Mfrs Notified
Comments Processed

LOG OF MEETING

DIRECTORATE FOR ENGINEERING SCIENCES

SUBJECT: Public Hearing - All-Terrain Vehicles

DATE OF MEETING: July 26, 1985 PLACE: Concord, New Hampshire

LOG ENTRY SOURCE: Roy Deppa, ESMT

DATE OF ENTRY: July 31, 1985

COMMISSION ATTENDEES:
Leonard DeFiore, Executive Director
Richard Swackhamer, Regional Director, NYC
Roy Deppa, ESMT

NON-COMMISSION ATTENDEES:
Melvin Stahl, SVIA
Ed Glynn, Honda
Roger Hagie, Kawasaki
John Walsh, Suzuki
Glen Parkinson, Yamaha

RECEIVED
OFFICE OF THE SECRETARY
JUL 31 1 20 PM '85
CONSUMER PRODUCT SAFETY COMMISSION

SUMMARY OF MEETING:

Len DeFiore opened the meeting by recognizing that the current activities between CPSC and the SVIA are both cooperative and adversarial due to the range of options for future actions. The purpose of the meeting was to discuss some of the more cooperative aspects, and to discuss some additonal activities which CPSC would like to see from SVIA. The SVIA presentation at the Concord hearing showed that the current estimates of instructor and novice training for 1985 fall substantially short of the previous target. Several alternatives to the training were discussed which SVIA might institute during the interim while the training program is being established, such as videotaped programs for point-of-purchase viewing.

The ATV exposure survey, and some of the preliminary industry comments on it, were discussed. The necessity for a timely survey was stressed, as were the resource constraints faced by CPSC in conducting such a survey. The possibility of an industry-sponsored parallel survey to be conducted by a recognized third party was suggested by CPSC as a way to accomodate industry concerns over methodology.

The SVIA members asked that CPSC make some efforts to employ governmental resources in promulgating the SVIA training/education program as well as other programs which exist at state and local levels. A suggestion was made that CPSC Field offices could interface in an organized program with state and local (including service organizations and clubs) bodies to publicize training programs including highlighting local ATV safety programs. In response to a number of requests made during the Concord hearing, SVIA asked that CPSC look into the possibility of developing or sponsoring model legislation at the state level.

Distribution: OS - OPM - ES - Commission Attendees - File
RWDeppa/jj/7/31/85

Attachment #3

September 5, 1985

Robert M. Sussman, Esquire
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044

RE: Emerson's Participation in
NLPGA "Gas Check" Program

Dear Mr. Sussman:

We have received your letter of May 8, 1985 in which, among other things, you requested our views on the need for Emerson to replace those post-1976 controls (those equipped with an "approved" knob, but lacking the inlet filter built into the control) located during the course of the NLPGA "Gas Check" Program, where a drip leg is found to be present in an installation or is subsequently installed.

It is the staff's position that the post-1976 valves are included within the scope of Consent Agreement and Order No. 80-C0005, and that the Order technically requires these valves to be replaced, regardless of the source by which these valves are identified.

We have insufficient evidence at this time to conclude that the presence of a proper drip leg on an installation is an effective means of particulate removal from LP gas, or is as effective as those Emerson valves with inlet filters built in. Nevertheless, we do not believe Emerson should be required to replace post-1976 controls described in paragraph six of the Consent Agreement and Order that are located as a result of the NLPGA "Gas Check" Program (or any other such program by another name) to inspect LP gas installations, if a functioning drip leg is found to be present or is subsequently installed and a leak test is performed on all water heater controls. Of course, we expect Emerson to continue to offer replacements for any pre-1976 controls that are identified, regardless of the source of identification.

The basis for our position is that, as you pointed out in your letter, the Consent Agreement and Order were intended to address problems associated with the control knob of the LP valve. At the time the Agreement was entered, the staff had not made a preliminary determination concerning a contamination hazard and was not seeking to address a potential hazard associated with the presence or absence of an inlet filter on the valve. Emerson's agreement to replace the post-1976 controls with controls equipped with an inlet filter was included at Emerson's insistence, with the assent of the staff. It was not the subject of our concern at that time and, as characterized in the Agreement, was done solely "to meet certain 'state of the art' standards embodied by the present White-Rodgers thermostat." Of course, the fact that in the past we have not sought corrective action for a particular matter would not preclude the staff from seeking corrective action at a later time, if the circumstances required such action.

The Directorate for Compliance and Administrative Litigation has the responsibility to recommend that enforcement actions be taken to enforce orders issued by the Commission. We would not recommend that the Commission initiate an action to enforce the requirement of the order that Emerson offer replacements for post-1976 controls if the conditions described above concerning the presence of a functioning drip leg are present. However, in order to be formally relieved of this requirement, you may wish to petition the Commission to re-open the proceeding. If you petition the Commission to re-open the proceeding, the Commission could then issue a modified order, as provided by paragraph 17 of the Agreement.

Sincerely,

/s/

David Schmeltzer
Associate Executive Director
Directorate for Compliance and
Administrative Litigation

Attachment #4

COVINGTON & BURLING
1201 PENNSYLVANIA AVENUE, N. W.
P. O. BOX 7566
WASHINGTON, D. C. 20044
(202) 662-6000
WRITER'S DIRECT DIAL NUMBER

(202) 662-5270

DANIEL M. GRIBBON
STANLEY L. TEMKO
JAMES C. MCKAY
JOHN W. DOUGLAS
HAMILTON CAROTHERS
H. RANDOLPH WILSON
ROBERTS B. OWEN
EDGAR F. CZARRA, JR.
WILLIAM H. ALLEN
DAVID B. ISBELL
JOHN B. JONES, JR.
PAUL R. DUKE
PHILIP R. STANSBURY
CHARLES A. MILLER
PETER BARTON HUTT
HERBERT DYM
JOHN VANDERSTAR
HARRIS WEINSTEIN
JOHN B. DENNISTON
PETER J. NICKLES
JONATHAN D. BLAKE
CHARLES E. BUFFON
ROBERT N. SAYLER
E. EDWARD BRUCE
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PAUL J. TAGLIABUE
ANDREW W. SINGER
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DANA T. ACKERLY
JOHN M. VINE
JOHN THOMAS SMITH II
JOHN P. RUPP
CLAUSEN ELY, JR.
RICHARD F. KINGHAM
ROBERT M. SUSSMAN
MICHAEL R. LEVY
GEORGE B. REID, JR.
THOMAS S. WILLIAMSON, JR.
JOHN R. BOLTON
JOANNE B. GROSSMAN
J. MICHAEL HEMMER
GREGORY M. SCHMIDT

HARRY L. SHNIDERMAN
DON V. HARRIS, JR.
WILLIAM STANLEY, JR.
WEAVER W. DUNNAN
EDWIN M. ZIMMERMAN
JEROME ACKERMAN
HENRY P. SAILER
JOHN H. SCHAFER
ALFRED H. MOSES
JOHN LEMOYNE ELLICOTT
DAVID E. MCGIFFERT
H. EDWARD DUNKELBERGER, JR.
BRICE MCADOO CLAGETT
RICHARD A. BRADY
ROBERT E. O'MALLEY
EUGENE I. LAMBERT
MARK A. WEISS
HARVEY M. APPLEBAUM
MICHAEL S. HORNE
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VIRGINIA G. WATKIN
RICHARD D. COPAKEN
CHARLES LISTER
PETER D. TROOBOFF
WESLEY S. WILLIAMS, JR.
DORIS D. BLAZEK
WILLIAM D. IVERSON
S. WILLIAM LIVINGSTON, JR.
JAMES R. ATWOOD
COLEMAN S. HICKS
STUART C. STOCK
EUGENE D. GULLAND
O. THOMAS JOHNSON, JR.
EUGENE A. LUDWIG
PATRICIA A. BARALD
REEVES C. WESTBROOK
THEODORE VOORHEES, JR.
JEFFREY S. HUVELLE
PAUL J. BERMAN
WILLIAM P. SKINNER
GEORGE M. CHESTER, JR.
RICHARD A. MESERVE

FONTAINE C. BRADLEY
EDWARD BURLING, JR.
HOWARD C. WESTWOOD
CHARLES A. HORSKY
JOHN T. SAPIENZA
JAMES H. MCGLOTHLIN
ERNEST W. JENNES
EDWIN S. COHEN
COUNSEL

JOHN SHERMAN COOPER
OF COUNSEL

TWX: 710 822-0005 (CB WSH)
TELEX: 89-593 (COVLING WSH)
TELECOPIER INFORMATION:
(202) 662-6290
CABLE: COVLING

May 8, 1985

HAND DELIVERY

Mr. David Schmeltzer
Associate Executive Director
Directorate for Compliance and
  Administrative Litigation
Consumer Product Safety Commission
Room 240-B
5401 Westbard Avenue
Bethesda, Maryland 20207

Re: Commission Deliberations Concerning SX 242 Valve

Dear Mr. Schmeltzer:

We recently learned that the staff has finally forwarded to the Commission its recommendations and supporting analysis concerning the Essex SX 242 Valve. We further understand that, as part of its briefing package, the staff has provided the Commission with the Memorandum and Appendices which Hamilton Standard submitted on February 28.

In view of the delay in transmitting the staff's recommendations to the Commission, we are concerned that the staff has prepared an extended rebuttal to Hamilton Standard's Memorandum as well as provided the Commission with new analysis and information which was never shared with Hamilton Standard. In this event, the materials before the Commission could well provide an incomplete and one-sided discussion of the issues that the Agency must address in deciding whether to issue a Complaint under Section 15 of the Consumer Product Safety Act.

So that the Commission has the benefit of Hamilton Standard's views, we request that you provide it with two letters which Hamilton Standard sent to the staff following transmission of its February 28 Memorandum and Appendices. These letters, dated March 14, respond to a number of the staff's oral comments on our Memorandum and restate Hamilton Standard's position on further negotiations concerning a suitable corrective action program. Copies of these letters are enclosed.

Although these letters will help the Commission appreciate Hamilton Standard's position, we are concerned that they may not address the new arguments and information which the staff has developed since receiving our February 28 submission. Accordingly, we are reiterating our request to make an oral presentation directly to the Commission. During such a presentation, we would be prepared to address any legal or technical issues that the Commission deems relevant.

We would also be pleased to comment in writing on any issues, identified by the staff or the Commission, that we have not had an adequate opportunity to address in prior submissions. We urge you and the Commission to bring such issues to our attention in the event any uncertainty exists about Hamilton Standard's views or we can offer technical data or analysis that will contribute to the Commission's understanding of the issues. Given the protracted nature of the staff's investigation and the delay in transmitting the staff's recommendations, a brief additional period for oral or written presentations should not interfere with the Commission's decision-making process and will result in more informed and objective consideration of the issues.

We are sending a copy of this letter to the Chairman and other Commissioners to assure that they are aware of our interest in providing additional information on this matter.

Sincerely yours,

Robert Sussman

Robert M. Sussman rb

RMS/rb
Enclosures

cc: Chairman Scanlon (w/o enc.)
Commissioner Armstrong (w/o enc.)
Commissioner Dawson (w/o enc.)
Commissioner Statler (w/o enc.)
Phillip E. Bechtel, Esq. (w/o enc.) ✓
Eric Stone, Esq. (w/o enc.)

Attachment #5 L. DeFiore's copy

Walter Hobby, AED/EC July 12, 1985
William Walton, AED/ES

Leonard DeFiore, Executive Director /s/

Upholstered Furniture

After our meeting the other day, several documents have come to my attention about which I would like your reactions. Specifically, the A. D. Little Report of 1984 has some data about weltless furniture and Class II fabrics. According to that report, 57.6 percent of upholstered furniture is weltless, so that if 20 percent of upholstered furniture is covered by Class II fabrics, then only 11.5 percent of upholstered furniture is both weltless and covered with Class II fabric. Is that correct?

Secondly, the attached Rob Rogowsky memorandum on the "chair vs. cigarette controversy" raises some interesting methodological questions on which Engineering should comment.

Rob's points seem to have merit in several ways. First, it does seem that the probability of ignition of a particular type of chair is more accurately reflected as a function of ignition attempts per sample of chairs, rather than simply positively or negatively regardless of attempts. Secondly, by using an "all or nothing" reporting system, we may gloss over important differences among chair types. For example, it may make better sense to distinguish between, say, a chair which ignites 1 of 12 times in one spot only, and one which ignites 12 of 12 times in all locations. In short, a system which reports and analyzes along a continuum of behavior, rather than merely at the poles, normally is judged to be methodologically superior.

Attachment

cc:
H. Cohen, OPM

LDeFiore/bjg:OEX:492-6550:07/12/85:#3-08:Furnitur

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

TO : Commissioner Terrence Scanlon
March 21, 1984
FROM : Robert A. Rogowsky RAR
SUBJECT: Flammability Testing for Upholstered Furniture

Recommendation: The Commission should decide on a statistically meaningful methodology to measure the flammability of upholstered furniture. Past practice of measuring success chair-by-chair provides no useful information regarding fire safety in upholstered furniture. Nor does this implied, but never enunciated standard represent a usable test of the likelihood of success or failure of a consumer's furniture.

Issue

UFAC is concerned with the likely misunderstanding of the progress made in upholstered furniture if the CPSC continues to fail a piece of furniture if any one of 12 to 18 cigarettes placed on that item smolders beyond the predetermined distances that earmark a failure. They fear, in particular, that the media will misconstrue the statistics to the detriment of the real progress made by the CPSC and UFAC.

Relying on an analysis by Dr. H.M. Wadsworth, Professor of Statistics at the School of Industrial and Systems Engineering, Georgia Tech, UFAC argues a chair-by-chair test misrepresents the statistical test and, hence, leads inevitably to inaccurate results that do not reflect true hazards. They believe the results should be reported on a cigarette-by-cigarette basis.

Dr. Wadsworth's Analysis

Dr. Wadsworth argues that "if there is no difference in ignition probability among the locations, multiple cigarettes on a chair should be tested as replicate tests." In other words, if the presence of more than one cigarette on a chair does not increase or decrease the likelihood of failure of any single cigarette, each should be counted as a single experiment. A chair then is a vehicle for 12 tests, or however many cigarettes are placed on it.

Reporting a success/failure ratio by chairs will give skewed results. Each cigarette has a certain probability of failing the test. That probability is empirically determined by seeing how many cigarettes will fail of a set tested. If 20 of 100 cigarettes fail, we have an 80% success rate. The probability of failure is $1-.80 = .20$, or 20%. The probability of getting at least one ignition from a set of three cigarettes is $1-(.08)^3 = 1-(.512) = .488$. The likelihood of one ignition from a set of 12 cigarettes would be $1-(.80)^{12}$ $=1-.0687 = .9313$. Consequently, a testing procedure that uses a single chair to replicate a dozen tests will almost certainly ignite a relatively large number of chairs. But that number is not necessarily related to the ignition rate of the cigarettes. If a chair has 12 cigarettes on it and each cigarette has a 20% chance of failure, each chair has a 93% chance of failing if failure of the chair is determined by the failure of one cigarette.

Discussion

The major problem is the absence of any clear theoretical underpinning we are trying to test short of fire safety. The current "one cigarette fails, the chair fails" test is not adequate because it does not tell us anything reliable about the fire hazard of dropping ignited cigarettes on chairs. It apparently was used in the 1980 testing without a substantive explanation as to what that standard is supposed to test. CPSC and UFAC agreed that a more appropriate test methodology should be devised. This task has not been accomplished, but it is clear that the CPSC needs to outline precisely what our current testing purports to tell.

The basic regulatory goal is to reduce the likelihood that a piece of upholstered furniture will ignite if a cigarette is carelessly dropped and neglected. More technically, we want to reduce the probability a specified ignition source will result in a burn. The appropriate test estimates that probability by making a set of observations of the reaction of the test subject to the influencing factor. In this case, the experiment looks to the probability a neglected cigarette will cause ignition given the changes that have been made in upholstered furniture materials designed to resist ignition. A chair-by-chair test does not address that question.

Consider an example: Two-chairs are tested, each with 12 cigarettes. Two cigarette burns, one on each chair. One-hundred percent of the chairs fail. That result does not tell us that if we purchase a chair there is a 100% probability that a neglected cigarette will ignite the chair. Similarly, if two cigarettes fail, but both on one chair, it is inaccurate to conclude that today's customers are buying furniture that has a 50% probability of igniting if a cigarette is carelessly dropped. The test tells us that of 24 instances of dropped and neglected cigarettes, we can expect two incidences of ignition. (Remember that ignition in this context means smoldering beyond roughly a 1-2" length from the cigarette.)

Given the multiple cigarette test method and the objective of reducing the probability of open-cigarette ignition, chair-by-chair results provide no statistically useful information and are liable to serious misinterpretation. Reporting how the results were distributed by chairs is useful only if there was an abnormal distribution among chairs or any anomaly that would tend to bias the statistical results. For instance, if 25% of the ignitions occur on one or two chairs or were heavily distributed in a certain type or style of chair, that finding should be reported and accounted for in the analysis. Otherwise, an entirely accurate and full understanding of the test results and the risk posed by cigarettes on upholstered furniture can be had absent chair-by-chair data.

Cigarette-by-cigarette analysis is more appropriate in terms of what is actually being tested. Simple cigarette-by-cigarette testing,however, is not as useful as results broken down by more specific testing conditions. Better information about flame resistance for identifying problem areas is found by grouping cigarette observations based on the conditions under which they are tested. That is, separate flat surface observations should be distinguished from welt cord observations. A high success rate of one may bias a lower success rate of the other. To identify problem areas, and to appropriately measure the likelihood a neglected cigarette will result in a fire hazard, we should group the results by situation (surface, crevice, welt cord, etc.) and report the true probability based on the actual ignitions as a percentage of observations in each grouping.

A final caveat must be made. Practicality dictates we accept the assumption that each chair is equal in terms of fire hazard. We are saying that the probability of a cigarette falling on deep pile on a soft cushion with lots of pillows, folds and crevices is the same as a cigarette falling on stretched fabric with a short pile, In effect, non-identical circumstances dilute the reliability of the statistical test. Given a limited budget, it is impossible to carry out ideal experiments. Nevertheless, it is important to keep in mind that the results presented are unavoidably flawed and can only be suggestive.

Attachment #6

OEX

UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT
SAFETY COMMISSION
WASHINGTON, D.C. 20207

TO: The Commission
THROUGH: Sadye E. Dunn, Secretary
THROUGH: Daniel R. Levinson, General Counsel
THROUGH: Leonard DeFiore, Executive Director
THROUGH: Harry I. Cohen, Director, OPM

DATE: 17 SEP 1985

FROM: James F. Hoebel, Program Manager, Fire and Thermal Burn Hazards, Office of Program Management
L. James Sharman, Fire Programs Officer, Fire and Thermal Burn Hazards, Office of Program Management

SUBJECT: Upholstered Furniture Flammability - Status Report

In July 1984, staff reported to the Commission the results of a Commission evaluation of the Upholstered Furniture Action Council's (UFAC) Phase 2 furniture. This evaluation indicated that UFAC has made a further advancement toward the production of cigarette ignition resistant furniture. However furniture without box welts and furniture covered with predominantly cellulosic fabrics still ignite relatively easily and present a continuing problem.

The attached report covers industry and staff activities since the completion of the chair tests. This report has been reviewed and approved by the appropriate Associate Executive Directors. Regional Office Director comments are attached at Tab F.

Attachment

NOTE: This document has not been reviewed or accepted by the Commission.
Initial ______ Date 9/17/85

CPSA 6 (b)(1) Cleared
✓ No Mfrs/PrvtLblrs or Products Identified 9/17/85

Upholstered Furniture Flammability

Status Report

September 13, 1985

Prepared by the Fire and Thermal Burn Hazard Program Staff:

Patricia Fairall, Directorate for Engineering Sciences
Linda Fansler, Directorate for Engineering Sciences
Elizabeth Gomilla, Directorate for Compliance and Administrative Litigation
Robert Guenette, Office of Budget, Program Planning and Evaluation
Bea Harwood, Directorate for Epidemiology
Elizabeth Johnson, Office of Information and Public Affairs
Warren Mathers, Directorate for Engineering Sciences
Margaret Neily, Directorate for Engineering Sciences
Rita Orzel, Directorate for Health Sciences
Dale Ray, Directorate for Economic Analysis
Charles Smith, Directorate for Economic Analysis
Deborah Kale Tinsworth, Directorate for Epidemiology

For Information:

L. J. Sharman, Fire Programs Officer
James F. Hoebel, Program Manager
Office of Program Management
Consumer Product Safety Commission
Washington, D.C. 20207
(301) 492-6554

NOTE: This document has not been reviewed or accepted by the Commission.
Initial __________ Date __________

CPSA 6 (b)(1) Cleared
X No Mfrs/PrvtLblrs or Products Identified

EXECUTIVE SUMMARY

Based on a Commission evaluation of the Upholstered Furniture Action Council's (UFAC) Phase 2 furniture manufactured in 1983, Commission staff estimated that 76 percent of furniture produced by UFAC participants could be expected to resist ignition by cigarettes. UFAC was close to achieving their goal of 80 percent. These data also indicated that furniture without box welts and furniture covered with predominantly cellulosic fabrics still ignited relatively easily, and presented a continuing problem. Tests of components from the furniture indicated that some did not meet the UFAC acceptance criteria.

The current status of work on improvements to the cigarette ignition resistance of upholstered furniture is:

- National fire loss estimates for 1983 indicate a continuation of a downward trend in cigarette ignited upholstered furniture fires and deaths as a result of these fires. There still are, however, a significant number of fires, deaths and injuries reported each year; upholstered furniture fires started by cigarettes remain the leading cause of fire deaths among products within CPSC's jurisdiction.
- A 1984 survey of upholstered furniture companies indicated that the proportion of new furniture constructed with box welts has gone down. The use of thermoplastic fabrics, polyester fillings, and polyurethane foam, materials with good cigarette ignition resistance, continues at a high level.
- As part of their Voluntary Action Program, UFAC is undertaking a public relations program with the National Home Furnishings Association to encourage and promote the UFAC hang tag.
- UFAC's Technical Committee is investigating problems associated with their Voluntary Action Program test procedures. Primary actions at this time are to resolve the low level of compliance in component tests observed by the Commission with heat conducting welt cords removed from test chairs, and to develop a reproducible standard class II fabric for use in the UFAC tests.

Using the new furniture survey numbers, staff now estimates that about 68% of the furniture now produced by UFAC companies can be expected to resist ignition by cigarettes. UFAC is thus further from the 80% goal than originally estimated. The goal could be achieved with a 43% increase in the cigarette ignition resistance of furniture without box welts, or a 85% increase in the cigarette ignition resistance of furniture covered with predominantly cellulosic fabrics.

Further improvement in the cigarette ignition resistance of upholstered furniture will require a concerted effort by industry and/or government. Staff will continue to work with UFAC on this issue.

Two Commissioners requested options for possible future Commission action and staff recommendations. These are included in the body of the report.

I. INTRODUCTION

In July 1983, "Phase 2" of the Upholstered Furniture Action Council's (UFAC) Voluntary Action Program went into effect. This modification to their program incorporated new materials (heat conducting welt cords and thermoplastic interior fabrics) for improving the cigarette ignition resistance of upholstered furniture. To determine the effectiveness of these changes, the Commission evaluated the performance of 40 upholstered chairs manufactured after July 1983 by UFAC participating companies. The chairs were tested by burning cigarettes on the seat area (the area found most prone to ignition in earlier tests). The results of these tests were reported to the Commission in July 1984.* After adjusting the test results for distribution of fabrics and styles on the market, staff estimated that 76 percent of Phase 2 residential furniture manufactured by UFAC participants in 1983 could be expected to resist cigarette ignition. Only nine percent of the cigarettes produced an ignition. Phase 2, thus, represented a major improvement over the performance of pre-UFAC furniture and furniture tested in 1981, as Table I (page 11) shows. This significant accomplishment of the joint industry-CPSC project will surely result in significantly fewer fire deaths in the future.

On the above basis, UFAC in 1983 was close to achieving their objective that 80 percent of the furniture produced by UFAC participants would resist cigarette ignition. Analysis of the test data indicated that furniture without box welts and furniture covered with predominantly cellulosic fabrics still ignited relatively easily, and represented a continuing problem. In addition, tests of furniture components indicated that some components did not meet the UFAC test acceptance criteria.

The purpose of this briefing paper is to report the industry and staff activities to further improve upholstered furniture cigarette ignition resistance since completion of the 40 chair test.

II. FIRE DATA UPDATE

National estimates of fire losses in 1983 associated with upholstered furniture are given in Tab A (p. 14), along with trends in cigarette ignited fires for the period 1980-1983. These estimates are based on data from the U.S. Fire Administration and the National Fire Protection Association. Over the period 1980 to 1983, upholstered furniture cigarette ignited fires have decreased 40 percent. Deaths as a result of these fires have decreased 25 percent. While significant decreases in fires and deaths have occurred, upholstered furniture is still the item most frequently ignited in cigarette fires. Further, upholstered furniture fires started by cigarettes remain the leading cause of fire deaths among products within CPSC's jurisdiction. In 1983, an estimated 14,800 upholstered furniture fires, resulting in 860 deaths, occurred from cigarette ignitions. Further, deaths per 1000 upholstered furniture fires have increased from 46.7 in 1980 to 58.1 in 1983. While the number of fires have decreased, the risk of death from a given fire has increased. The reasons for this increase are not known.

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* Upholstered Furniture Flammability Briefing Package, Fire and Thermal Burn Hazards Team, July 13, 1984.

III. SURVEY OF FABRICS AND FILLING MATERIALS

A. Results

Under contract to CPSC, A.D. Little carried out a survey in 1984 of upholstered furniture companies to determine the fabric, filling materials, and constructions now being used in upholstered furniture. The survey was in two parts; one part covered UFAC member companies and the second part non-UFAC companies*. Using these data, the results of a similar survey carried out in 1981, and other earlier data supplied by the industry, two reports have been prepared. One is titled "Fabrics and Filling Materials Used in Upholstered Furniture" (Tab B, p. 25) and the second is titled "Upholstered Furniture Trends in Fabric and Filling Materials Used in Production, and Resulting Changes in the Composition of Furniture Found in American Households" (Tab B, p. 45). In addition a memo covering historical data on welt cords and cellulosic fabrics in furniture production is included (Tab B, p. 66).

The market survey report indicates:

Fabrics - The use of fabrics containing predominantly thermoplastic fibers (such as polyester or nylon) by UFAC member companies has increased significantly. (Such fabrics, chair tests indicate, provide improved cigarette ignition resistance.) In 1977, an estimated 54 percent of the fabrics contained predominantly thermoplastic fibers. This increased to 64 percent in 1981 and has remained at about this level since then (65 percent in the 1984 survey). Non-UFAC companies showed a similar fabric trend.

Cushions - The use by UFAC members of polyester filling as a topper or wrap on cushions has increased greatly since 1977. The 1984 survey found that 69 percent of the seat cushions produced by UFAC members contained this more cigarette ignition resistant material, up from 39 percent of 1977 production. A similar but smaller trend was reported for non-UFAC companies.

Filling Materials - The use of non-FR treated cotton batting by UFAC companies has nearly disappeared, and usage by non-UFAC firms has been greatly reduced. Primary materials now used by UFAC companies immediately under the upholstery fabric are:- polyester filling, polyurethane foam, FR treated cotton batting, and polyester/cotton blend fillings. Non-UFAC companies generally use more polyurethane foam and less polyester filling immediately under the upholstery fabric.

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* Current UFAC estimate (July, 1985) is that UFAC member companies represent 90 percent, on a dollar volume basis, of the upholstered furniture produced in the United States.

Constructions - The 1984 survey indicated that 43 percent of furniture being produced by UFAC member companies and about 45 percent of furniture produced by non-UFAC member companies had box welts. This is a significant difference from the earlier estimate of 65 percent in 1982. UFAC member companies reported that more than 97 percent of welt cord used on seat cushions was in compliance with the UFAC Phase 2 requirements*. Phase 2 welt cords were generally reported to be used also in other areas such as around skirts or on back cushions--not a requirement of the Voluntary Action Program. A.D. Little reported that non-UFAC companies did not appear to be aware of the UFAC Phase 2 requirements for welt cord.

UFAC member companies reported that slightly more than 40 percent of seat and back cushions were made with interior fabrics between the upholstery fabric and the cushion core. This is an increase over previously reported estimates of 25 percent. Non-UFAC companies reported usage of interior fabrics to be about half that of UFAC member companies.

The trend report analyzes fabrics and filling materials used to produce furniture since 1950. That analysis shows that the industry has shifted dramatically from materials that are less likely to resist cigarette ignition, such as cellulosic fabrics and untreated cotton filling material, to more ignition-resistant materials, such as thermoplastic fabrics and polyester filling materials. These changes have gradually been reflected in the composition of furniture found in households, and the more ignition-resistant materials are estimated to be present in households in significantly greater proportions than in 1975.

Information from surveys of UFAC participants and other furniture producers since 1977 indicate continuation of the above long-standing trends. Through its program, UFAC has encouraged the use of more ignition-resistant materials. However, in estimating the costs of its program, UFAC has not taken the established trends sufficiently into account. This resulted in estimates of costs attributed to the voluntary program that are considerably higher than those of the Commission staff.

* The furniture company reports were based on certifications provided by their suppliers. Elsewhere in the briefing paper, it is pointed out that many of the welt cords from chairs tested by CPSC did not meet the UFAC requirements.

B. Implications

The Commission's 40 chair tests indicated two areas needing further improvement. These are furniture without box welts and furniture covered with predominantly cellulosic content fabrics.

The chair test program attempted to provide a reasonable representation of furniture on the market following UFAC's implementation of Phase 2 of their Voluntary Action Program. The chair purchases were based on an estimated market distribution, of a) 65 percent predominantly thermoplastic upholstery fabric, 35 percent predominantly cellulosic upholstery fabric, and b) 65 percent of upholstered furniture with box welts, 35 percent without box welts. Since the chair purchases, the survey of the 1984 upholstered furniture market confirmed the fabric distribution to be 65 percent thermoplastic, 35 percent cellulosic. However, the survey further indicated that only 43 percent of upholstered furniture was being manufactured in 1984 with box welts.*

Based on the more recent box welt survey number, the quantity of upholstered furniture manufactured to meet the Phase 2 requirements which can be expected to resist cigarette ignition is now 68 percent. This is a decrease from the 76 percent calculated earlier. It should be emphasized that both of the numbers are estimates. The distribution of such factors as fabric and filling materials on various styles of weltless furniture is not known and, therefore, cannot be taken into account. CPSC laboratory data (Tab C, p. 70) do clearly show that furniture without box welts is more likely to ignite from cigarettes than furniture constructed with box welts and Phase 2 welt cord. The 1984 survey data indicate that furniture without box welts is more prevalent than originally estimated. This problem area, therefore, is larger than previously estimated.

IV. UFAC VOLUNTARY ACTION PROGRAM

A. Hang Tags

Of the 40 pieces of furniture purchased by CPSC, 17 were received without UFAC hang tags. In a letter of March 15, 1984 (Tab E, p. 103), UFAC indicates that they are undertaking a public relations program with the National Home Furnishings Association to encourage the retailer to buy UFAC-complying furniture, and to promote the use of the UFAC hang tag by retailers. A pilot program is expected to be in place by the end of 1985.

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* This shift in style is reported to be due to fashion trends.

B. Furniture Performance Improvement Investigations
(Tab D, p. 79, 88, 94 and 98)

Since UFAC's Technical Committee and the associated Laboratory Alliance were formed, a variety of materials and techniques have been assessed for their effects on the cigarette ignition resistance of upholstered furniture. These evaluations and their current status are briefly summarized below.

1. Fabric Fiber Content

Chair tests and laboratory investigations have clearly demonstrated that the higher the thermoplastic fiber content in a fabric, the greater its resistance to cigarette ignition. Earlier in this briefing paper, it was noted that there has been an increase in the use of thermoplastic fibers in upholstery fabrics through 1981. Industry expects the use of thermoplastic fibers in upholstery fabrics will fluctuate with fashion demands, but will continue at about the same high level observed between 1981 and 1984.

2. Fabric Treatments

In the late 1970's, the U.S.Department of Agriculture investigated possible treatments for improving the cigarette ignition resistance of cellulosic fabrics. This work was not taken beyond the pilot plant stage. During 1982 and the first half of 1983, UFAC evaluated the effectiveness of a variety of fire retardant chemicals for increasing the cigarette ignition resistance of upholstery fabrics. UFAC stopped their evaluation in mid-1983 on the basis that a) they had shown some chemicals to impart improved cigarette ignition resistance, and b) further tests to determine the effect of these chemicals on fabric properties could only be determined by the fabric mills or the finishers. The most promising candidates from the UFAC evaluations were tested by the Center for Fire Research at NBS for CPSC. Some provided improved ignition resistance but had significant adverse effects on other necessary fabric properties, and thus were commercially unacceptable. Primary problems encountered were harsh hand (feel) and color change.

This chemical technique provides improvement only for the particular fabric under investigation. Materials, application techniques and processing procedures must be specifically tailored for each fabric. There are literally hundreds of different fabrics many of which are produced in short yardages, frequently 100 yards or less. With these short yardages, chemical fire retardant treatment is a significant cost factor. Industry estimates that a few mills are producing fire retardant treated upholstery fabrics.

With some fabrics, an alternate method of obtaining the desired increase in cigarette ignition resistance is to substitute thermoplastic yarns for the cellulosic yarns in the fabric. This technique is being used by a number of the fabric mills.

3. Fire Retardant Backcoating

One of the fire retardant chemical suppliers extensively investigated the addition of fire retardants to backcoatings used on upholstery fabrics. These FR treated backcoatings were found to provide increased cigarette ignition resistance. Commercial use has been limited for similar reasons to those given above for fabric treatments: materials, application techniques and processing procedures are unique to each fabric. Industry indicates some experimental fire retardant backcoating work is continuing at individual mills.

4. Filling Materials

As noted earlier, a major change resulting from the UFAC Voluntary Action Program has been the elimination from upholstered furniture of easily ignitable filling materials such as cotton batting. These have been replaced with such materials as polyurethane foam, polyester fiberfill, polyester/cotton blend fillings and treated cotton batting which provide improved cigarette ignition resistance. The primary need is to ensure that filling materials used by furniture manufacturers do meet UFAC's test requirements. UFAC has a quality control program for this purpose.

5. Modified Polyurethane Foams

The polyurethane foam industry is continuously searching for foams with improved flammability properties. Foams, such as the type required by California regulations where a fire retardant is added during manufacturing, have not resulted in major improvements in cigarette ignition resistance. The CMHR (chemically modified high resiliency) foams have significantly improved cigarette ignition resistance. CMHR foams are being used in theatre seats, institutional furniture, etc. However, they are not being used in residential furniture because of their high cost. Recently, a polyurethane foam with reported flammability properties between those of the "California" foam and CMHR was introduced. This foam is under evaluation.

6. Interior Fabrics

Where interior fabrics* are used, UFAC's Voluntary Action Program requires the fabric to have performance characteristics similar to thermoplastic upholstery fabrics, which provide improved cigarette ignition resistance. As with filling materials, the need is to ensure that manufacturers use interior fabrics which comply with UFAC's requirements. UFAC has also investigated some of the interior fabrics considered by the

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* Fabrics wrapped around the filling materials and immediately under the upholstery fabrics, generally used in cushions.

Federal Aviation Administration as barrier materials. These, industry reports, are not being used because of inconsistent smoldering resistance and high cost.

7. Heat Conducting Materials

One of the most successful techniques developed by the industry to improve ignition performance is the heat conducting welt cord. These cords provide a significant increase in the cigarette ignition resistance of furniture with box welts. In the case of furniture without box welts, CPSC tests of mock-ups and finished chairs showed heat conducting flanges to provide an even greater increase in cigarette ignition resistance. UFAC has been investigating the possibility of using heat conducting flanges in production furniture. A variety of aesthetic and manufacturing problems have been encountered. With lightweight upholstery fabrics, the flange can be seen through the fabric and is reported to be noisy in use. A major manufacturing problem is that of shifting or bunching of the flange when the polyurethane core is placed in the cushion fabric shell. Recently, UFAC evaluated lamination of the flange to the foam core to prevent shifting. This was found to add $2 to $4 to the manufacturing cost of a cushion. Industry indicates the probability of commercial success appears to be low.

With heavyweight cellulosic fabrics, such as Haitian cotton, neither heat conducting welt cords nor heat conducting flanges will prevent ignitions. Work carried out earlier by the industry indicated that a complete inner layer of aluminized fabric is one possible approach to minimizing such ignitions. However, no work of this type is currently being carried out.

C. Component Tests

As part of the CPSC 40 chair test program, component materials from the chairs were tested following the UFAC test procedures. Some of the components exhibited a good level of conformance with the UFAC requirements. Others exhibited poor conformance. A program has been undertaken by UFAC's Technical Committee to investigate the problem areas.

1. Heat Conducting Welt Cord (Tab D, p. 81, 90, 95 and 100)

One of the problem areas was that of the heat conducting (aluminum/paper) welt cords. CPSC tests showed that only about 50 percent of the cords removed from the test chairs met the UFAC requirements. This was selected as the first component test problem to be investigated. To check for problems with the test procedure or the techniques used to carry out the test, samples of aluminum/paper welt cord were tested by CPSC's laboratory and Guilford Laboratories. Both laboratories obtained the same results, thus ruling out test procedure problems. As the next step, approximately a dozen spools and boxes of aluminum/paper welt cord have been obtained from five manufacturers. Samples taken approximately every 50 yards along the length of each 300 yard spool were tested and found to meet the UFAC test requirements. Other samples will be manipulated as they would be during cushion production and then tested. This last test is to see if the aluminum foil in the welt cord ruptures during routine furniture production.

2. UFAC Class II Fabric (Tab D, p.82, 90, 95 and 100)

Several of the UFAC test methods require the use of a UFAC standard class II fabric. Severe variability has been encountered with this fabric, making test results questionable. UFAC has a program underway to select a new, more reproducible standard class II fabric. Guilford Laboratories has evaluated a series of military specification fabrics in comparison with currently acceptable samples of the standard class II fabric. Initial tests indicated two of the military specification fabrics to have sufficient promise to warrant larger scale tests. When material for a larger scale test was checked, they were found to give significantly different results from those obtained initially, thus negating these fabrics as candidates. The search for a suitable replacement fabric will continue. One approach under consideration is to have the current class II fabric woven by a specialty mill, which may eliminate much of the variability problems.

V. FUTURE DIRECTION

Phase 2 of UFAC's Voluntary Action Program provided a substantial improvement in the cigarette ignition resistance of upholstered furniture. CPSC's 1983 chair tests indicated that UFAC was close to achieving their accepted goal that 80 percent of the furniture produced by UFAC participants resist ignition by cigarettes. CPSC's recent market survey indicates that the market share of weltless furniture has increased. Based on the sample of chairs tested by CPSC, this has led to a reduction in the staff's estimate of the percentage of furniture pieces that would be expected to resist cigarette ignition.

Based on the recent box welt survey number and the sample of chairs tested, CPSC staff calculations indicate that about 68 percent of UFAC's furniture can be expected to resist cigarette ignition. UFAC's 80 percent goal could be achieved by improvements in the furniture without box welts, the furniture covered with predominantly cellulosic fabric, or by a combination of the two. For instance, a 43 percent increase in the cigarette ignition resistance of upholstered furniture without box welts or an 85 percent increase in the cigarette ignition resistance of furniture covered with predominantly cellulosic fabrics would raise the overall proportion of cigarette ignition resistant UFAC furniture to the 80 percent target* (Tab C, p. 73).

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* Assuming no change in the market distribution of fabrics and styles.

The above are the two major areas in which improvements are needed. There are, in addition, a variety of other aspects, such as the quality control of components, where further improvements can and should be made.

UFAC has been urged to undertake a concerted effort to develop further improvements and new goals were suggested (Tab D, p. 81 and 89). UFAC's responses to these suggestions were given in a letter of March 15, 1985 (Tab E, p. 103). The letter states that UFAC will continue to search for cost-effective materials that will increase the cigarette ignition resistance of upholstered furniture.

VI. STAFF RECOMMENDATIONS

Staff believes that even though UFAC has made a substantial contribution to fire safety, more work remains to be done. Staff recommends that the current CPSC cooperative project with UFAC continue. Staff also suggests that joint CPSC/UFAC funding of contract research to develop feasible improvements in performance be explored and that a Consumer Product Safety Alert be issued discussing ignition problems with furniture without box welts and furniture covered with cellulosic fabrics. These and other options are briefly outlined below.

VII. OPTIONS

Today's UFAC furniture can be expected to exhibit significantly improved cigarette ignition resistance over furniture produced prior to UFAC's Voluntary Action Program. Some of this furniture, however, will still ignite from cigarettes. Staff has observed that recent progress in improving furniture performance has been slower than anticipated. Commission resources had been allocated, in FY 1985, for laboratory evaluation of new materials and techniques to further improve cigarette ignition resistance. However, these innovations did not become available in FY 1985.

In 1981, UFAC accepted several goals proposed in a staff briefing paper of May 26, 1981. One of these goals was - "No more than 20% of the UFAC labeled furniture should ignite from a cigarette". Further improvement in the cigarette ignition resistance of furniture is needed if UFAC is to achieve this goal. When considering a future course, a variety of options are available to the Commission. These include:

1. Stop further work on the cigarette ignition resistance of upholstered furniture on the basis that the furniture industry has achieved an acceptable performance level.

2. Continue the present upholstered furniture program (participate in UFAC Technical Committee meetings, work with UFAC to explore new materials and techniques, and evaluate promising candidates in the Commission laboratory as they become available), on the basis that this operating technique has

resulted in improvements in the cigarette ignition resistance of upholstered furniture and can be expected to provide further improvements.

3. Urge UFAC to directly fund research specifically directed towards the development of materials and techniques for the production of furniture without box welts and with predominantly cellulosic content fabrics, which will enable UFAC to achieve the agreed goal of having 80 percent of the furniture produced by UFAC participants resist ignition from cigarettes.

4. CPSC sponsor the same research.

5. UFAC and CPSC jointly sponsor the above research.

6. Publish an Advance Notice of Proposed Rulemaking (ANPR), on the basis that a) a substantial portion of upholstered furniture being manufactured today can be expected to ignite from cigarettes and b) further improvements in cigarette ignition may be achieved by a mandatory regulation.

7. Issue a Consumer Product Safety Alert discussing the cigarette ignition problem with furniture without box welts and furniture covered with predominantly cellulosic content fabrics.

TABLE I

RESISTANCE OF UPHOLSTERED FURNITURE TO CIGARETTE IGNITION

	1984 UFAC TESTS SIMULATING PRE-UFAC CONSTRUCTION	CPSC TESTS OF 1980 UFAC RETAIL FURNITURE	CPSC TESTS OF 1983 UFAC PHASE 2 RETAIL FURNITURE	UFAC GOAL
Proportion of UFAC furniture expected to resist cigarette ignition	15%	50%	68%*	80%
Proportion of cigarettes which did not ignite furniture	56%	78%	91%	-

* Originally estimated at 76%, based on 35% of upholstered furniture without box welts. Recent market survey (Tab B, p. 25) reports 57% of furniture without box welts resulting in a decrease in the estimate to 68%.

Attachment #8

UNITED STATES GOVERNMENT

Memorandum

U.S. CONSUMER PRODUCT
SAFETY COMMISSION
WASHINGTON, D.C. 20207

TO The Commission
Through: Sadye E. Dunn, Director, OS Dunn
Through: Danial Levinson, General Counsel
Through: Dr. Leonard DeFiore, Executive Director

DATE 7 AUG 1985

FROM Dr. Robert D. Verhalen, AED, EP

SUBJECT Report on NEISS Pilot Study to Collect Causal Data

The attached report presents the results of a pilot study to test the feasibility and to determine the cost of collecting additional data relating to the cause of product-related accidents. The pilot study required hospital staff to interview the victims treated in a sample of NEISS hospitals.

Before any definite conclusions are drawn, a second pilot study needs to be conducted. The second pilot study will determine whether useful causal data can be collected using a self-administered questionnaire, completed by the patient or someone accompanying the patient. The self-administered questionnaire is less expensive and has a higher likelihood of acceptance by hospital staff.

Attachment

6(b) CLEARED: 8/7/85
✓ No Mfrs Identified
____ Excepted ____
____ Mfrs Notified
____ Comments Processed

NOTE: This document has not been
reviewed or accepted by the Commission
Initial ____ Date 8/7/85

Results of a Pilot Study to Collect Causal Data from Victims Treated in Hospital Emergency Rooms for Product-Related Injuries from April 15, 1985 through April 28, 1985

Division of
Hazard and Injury Data Systems
U.S. Consumer Product Safety Commission
July, 1985

Executive Summary

During a two-week pilot study in eight NEISS hospitals, the feasibility of supplementing the NEISS record with the victim's answer to six questions on factors contributing to the cause of the accident was explored. Of the 866 victims interviewed, 238, or 27 percent, indicated that one or more of the following factors contributed to causing the accident:

1. product malfunction, failure
2. product age or condition
3. product design
4. misuse of product
5. use of alcohol or drugs, illness or prior injury
6. environmental condition

Approximately 10 percent of all victims reported that product failure, condition or design was a contributing factor; 11 percent reported that product misuse was a factor; 6 percent reported that an environmental factor contributed to causing the accident; and 2 percent indicated that use of alcohol, drugs, illness or a prior injury contributed to causing the accident. Some victims indicated that multiple factors contributed to causing the accident. We cannot overemphasize the fact that these responses reflect the perception of the victim (or someone accompanying the victim) at the emergency room while awaiting treatment. The reports may or may not reflect true conditions, as no follow-up was undertaken.

Victims were interviewed by the emergency room staff (admitting room clerks or nurses) during the admittance procedures. These data were transmitted to the Commission as part of the NEISS computer record by the NEISS coding clerk. There was considerable variability in the responses to the survey questionnaire from one hospital to another. These differences in reporting cannot be assessed in this pilot study which was conducted without centralized training and on-site visits. The data must be reviewed on the basis of face validity alone. Accordingly, no conclusions can be drawn about the proportional values reflected above with regard to the degree to which any characteristic is reported by the hospitals.

While little negative reaction from emergency room patients was reported, some negative reaction from emergency room personnel was reported. Perhaps because of the added burden on the staff, only two of the eight participating hospitals would be definitely willing to participate in an ongoing effort to collect these data. The estimated cost of collecting these data is $1.50 per case, in addition to the usual cost of the NEISS. Overall, this would translate into approximately $210,000 for Fiscal Year 1986. Because of the cost and difficulty in gaining acceptance with the hospital staff, a second pilot study is recommended where the patient completes the questionnaire.

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ALBERT G. BUSTAMANTE, TEXAS
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NINETY-NINTH CONGRESS

Attachment #9

Congress of the United States
House of Representatives
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2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515

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MAJORITY—225-5051
MINORITY—225-5074

September 6, 1985

Mr. Stuart M. Statler, Commissioner
Consumer Product Safety Commission
1111 - 18th Street, NW
Washington, DC 20207

Dear Commissioner Statler:

I am in receipt of documents provided by the Commission in response to my July 25th letter to Chairman Scanlon.

After a review of these documents, I continue to be concerned about statements by Commissioners on possible Commission action on All-Terrain Vehicles (ATVs). Specifically, your comments both in print and speech indicate to me a serious breach of the impartiality and objectivity required of Commissioners to properly consider the ATV issue during this crucial investigative period.

Your personal press releases in the guise of "fact sheets" under Commission letterhead have, in my judgment, placed the entire Commission's regulatory procedures on this issue at risk. According to the information the Commission has supplied, the agency's General Counsel's opinion seems to raise the possibility that your dissemination of "fact sheets" on ATVs was in violation of Section 6(b)(6) of the Consumer Product Safety Act (CPSA). That opinion requires that newly-created material, even if it incorporates information which had previously been cleared for release, must be scrutinized for accuracy and appropriate context. Your submission of a fact sheet for Section 6 clearance after you sent it to several news and consumer organizations around the country does not comply with this instruction. The Commission's staff demonstrated the merit of the General Counsel's position when they requested several changes to your fact sheet.

I believe there can be no doubt that you have pre-judged this issue and are consequently unable to make a rational and level headed decision based on facts presented to the Commission. Your unprofessional and antagonistic behavior during the CPSC's July 25th Concord, New Hampshire hearing was not only unbecoming of a U.S. Government official, but also clearly demonstrated your inability to listen dispassionately to evidence.

The Chairman of the Commission has stated several times that the CPSC is nowhere near having adequate information on which to make a decision. I continue to support the Commission's investigation and will abide by its decision if it can be conducted in an atmosphere of impartiality. However, I seriously doubt that a court of law could fail to consider the remarks and attitude of a Commissioner who has essentially decided this issue without regard to the record which may be developed.

Commissioner Statler, I do not doubt your sincerity and desire to improve the injury record of the ATV. Nevertheless, your actions may jeopardize the ability of the Commission to propose any serious solutions. I, therefore, call on you in the name of fairness to recuse yourself from further consideration of the ATV issue. I also wish to remind you of your duty to uphold the law and to cease disseminating prejudicial and inaccurate information regarding the Commission's stance on this issue. I am also fully prepared to pursue all other avenues to make sure that both the spirit and letter of the statutory mandate required of public officials such as yourself are met.

Sincerely,

Larry E. Craig

LARRY E. CRAIG
Ranking Minority Member
Commerce, Consumer & Monetary
Affairs Subcommittee

LEC:sf

cc: Honorable Doug Barnard
Chairman Terrence Scanlon
Commissioner Saundra Brown Armstrong
Commissioner Carol G. Dawson

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W. ALLEN MOORE, CHIEF COUNSEL AND STAFF DIRECTOR
RALPH B. EVERETT, MINORITY CHIEF COUNSEL AND STAFF DIRECTOR

United States Senate
COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION
WASHINGTON, DC 20510

October 17, 1985

The Honorable Charles A. Bowsher
Comptroller General of the United States
General Accounting Office Building
441 G Street
Washington, D.C. 20548

Dear Mr. Bowsher:

We hereby request the General Accounting Office to investigate certain allegations that have been raised with respect to the nomination of Terrence Scanlon to be Chairman of the Consumer Product Safety Commission. That nomination is currently pending before the Senate Committee on Commerce, Science, and Transportation.

We would very much appreciate expeditious handling of this request.

Sincerely,

Fritz Hollings
Ernest F. Hollings
Ranking Minority

Jack Danforth
John C. Danforth
Chairman

United States General Accounting Office

GAO

Briefing Report to the Chairman and Ranking Minority Member, Senate Committee on Commerce, Science, and Transportation

November 1985

CONSUMER PRODUCT SAFETY COMMISSION

Allegations About The Chairman

UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

HUMAN RESOURCES
DIVISION

November 20, 1985

B-221123

The Honorable John C. Danforth,
Chairman, and
The Honorable Ernest F. Hollings,
Ranking Minority Member
Committee on Commerce, Science,
and Transportation
United States Senate

In response to your October 17, 1985, request, we have reviewed certain allegations regarding Terrence M. Scanlon, whose nomination to be Chairman of the Consumer Product Safety Commission (CPSC) is pending before your Committee. We are providing the enclosed briefing report, which contains information we have obtained concerning the allegations.

In discussions with your office, we agreed to focus our work on the allegations made in a September 23, 1985, letter from Ms. Joan Claybrook, President, Public Citizen. The letter supplemented her September 10 testimony before your Committee. Our work, primarily performed at CPSC headquarters in Washington, D.C., and Bethesda, Maryland, mainly consisted of interviews with Commission employees. We also interviewed other individuals who had knowledge of matters discussed in the allegations, and we reviewed documents related to the allegations. Forty-one people were interviewed.

Evidence and documentation we reviewed did not substantiate 12 of the 16 allegations that we reviewed. For two of the other allegations (numbers 10 and 15), we were unable to determine whether they were valid because that would depend, in part, on Mr. Scanlon's intent. In the other two cases (numbers 1 and 14), an employee's refusal to be interviewed has precluded us from making a determination.

Two CPSC employees refused to allow us to interview them because we could not assure confidentiality and job protection. One of these two employees was said by others to have information that was relevant to two allegations. These matters are discussed in more detail in our briefing report, and we have discussed these matters with and provided the names of the employees involved to your office.

As arranged with your office, unless its contents are announced earlier, we plan no further distribution of this briefing report until 30 days from its issue date. At that time, we will send copies to interested parties and make copies available to others on request.

Should you need additional information on the contents of this document, please call Robert Hughes on 523-8666.

Richard L Fogel

Richard L. Fogel
Director

ALLEGATIONS CONCERNING

TERRENCE M. SCANLON

The Consumer Product Safety Commission (CPSC) is an independent regulatory commission that administers provisions of several laws relating to product safety. CPSC has five Commissioners, one of whom is the Chairman. The Chairman, as CPSC's principal executive officer, is responsible for all executive and administrative functions. In carrying out such functions, the Chairman is to be governed by CPSC's general policies.

Terrence M. Scanlon, who became a CPSC Commissioner in March 1983, became Chairman in January 1985 pursuant to a recess appointment made in late 1984 after the former Chairman resigned. A Commissioner's position has been vacant since January 1985.

During September 10, 1985, hearings held on Mr. Scanlon's nomination to be Chairman by the Senate Committee on Commerce, Science, and Transportation, Ms. Joan Claybrook, President of Public Citizen, made a number of allegations about Mr. Scanlon. In a September 23 letter, Ms. Claybrook provided information to the Committee to supplement her testimony and her comments. Mr. Scanlon, at the Committee's request, responded to Ms. Claybrook's testimony on September 13 and to her letter on October 2.

As agreed with the Committee's office, our review focused on the allegations made in Ms. Claybrook's September 23, 1985, letter. During our review, we interviewed 38 present or former CPSC employees, 2 attorneys that practice before CPSC who were named in Ms. Claybrook's allegations, and an Office of Management and Budget (OMB) official who was said to have knowledge about one allegation. Two CPSC employees refused to be interviewed because we could not assure confidentiality and job protection. We selected the persons to be interviewed based on names that were provided by Ms. Claybrook or suggested by other persons we interviewed.

Except for two persons we interviewed by telephone--an attorney in New York City and a former employee who was said to be moving from the area shortly--the people we interviewed provided their information under oath. During our interviews with present and former CPSC employees, we generally questioned them regarding all the allegations in Ms. Claybrook's letter.

We also reviewed Mr. Scanlon's two responses to Ms. Claybrook's allegations and material provided to us by people that we interviewed.

The allegations and our findings regarding them are presented below.

1. **Allegation:**

Mr. Scanlon has, both at the Department of Commerce, where he was formerly employed, and at CPSC, used government staff, equipment, and facilities to perform work for the "right-to-life" movement and for his personal business transactions, including real estate property he owns and leases.

GAO Findings:

We did not attempt to verify the allegations as they related to Mr. Scanlon's employment at the Department of Commerce because of the short time we had to complete our review and the long time that had elapsed since he was employed at the Department.

Mr. Scanlon told us that he has never used government staff, equipment, or facilities to perform work for the "right-to-life" movement or for his outside business interests while at CPSC. He said that occasionally, if he cannot get out of the office, he asks someone to go to the bank for him (for example, to cash a check so he has money for taxi fares).

Mr. Scanlon told us that he had accepted reimbursement from a secretary who he had asked to perform a task unrelated to government business. He said he had asked the secretary to do some banking transactions, including making a mortgage payment while he was on vacation. The payment was made late and a penalty was imposed. Mr. Scanlon said when he mentioned this to the secretary during an attempt to determine if another transaction--a deposit--had been made, she insisted on reimbursing him for the penalty. He said that, over his vigorous objections, she gave him a check, which he reluctantly accepted because she was so upset. He believed the amount involved was under $100.

Four of the six employees who work in the Chairman's office said they had not performed, nor had they any knowledge of anyone else performing, the types of activities alleged.

One employee said that she had not performed any activities related to "right-to-life," nor to her knowledge, had anybody else. She said that on occasion she had typed information, such as names and addresses, on lease forms for Mr. Scanlon. She said that she had done so about two or three times since she had worked for him (about 10 months) and it would take about 5 minutes to type the information on a lease. She also said she had (1) occasionally carried envelopes to Mr. Scanlon's friends during her lunch hour and (2) cashed travel checks for him, often during a morning break or lunchtime, if he was caught in meetings, on his way to speeches, or getting ready for a trip. She said that she was not aware of anyone else performing similar activities.

One of the six employees refused to be interviewed because we could not guarantee protection against any action that might result from her providing us information. Several employees we interviewed who do not work in the Chairman's office said that this employee (a secretary) had told them that she had performed work on "right-to-life" and outside business activities for Mr. Scanlon, and some of them said that she told them that she had records, such as copies, relating to that work. They generally had no direct knowledge of any such work and did not know the extent of work she may have performed. One employee told us that she observed this secretary typing several letters on the letterhead of a private school. She said the secretary told her that this was being done for Mr. Scanlon.

During our attempts to interview this secretary, she implied that she had records but refused to show them to us. Without information from this secretary, who is the same employee who reimbursed Mr. Scanlon for the penalty, we cannot determine whether "right-to-life" work was performed or the extent to which work on personal business was performed for Mr. Scanlon at CPSC.

2. **Allegation:**

Mr. Scanlon's involvement in "right-to-life" outside activities may (1) create a real or apparent conflict of interest and (2) violate a provision of law which prohibits a Commissioner from engaging in another business, vocation, or employment.

GAO Findings:

Our investigation did not reveal any instances in which Mr. Scanlon's membership in various "right-to-life" organizations created a real or apparent conflict of interest. Mr. Scanlon told us that he spent very little time on "right-to-life" activities--he estimated about 20 hours--since coming to CPSC. Ms. Claybrook provided no evidence to indicate that Mr. Scanlon spent a significant amount of time on "right-to-life," and the CPSC employees we interviewed generally did not know how Mr. Scanlon spent his time outside the office. The amount of time Mr. Scanlon said he spends on "right-to-life" activities is not sufficient, in our view, to constitute a business, vocation, or employment.

3. **Allegation:**

The CPSC Commissioners decided by vote to limit the scope of a survey to all-terrain vehicles (ATVs) rather than to include snowmobiles and dirt bikes. Mr. Scanlon moved to circumvent this decision by instructing his Executive Director to contact OMB, which clears such surveys, to undermine the Commissioners' decision.

GAO Findings:

We found no evidence to substantiate this allegation. Mr. Scanlon said that he did not ask the Executive Director to contact OMB. The Executive Director said he had contacted OMB at the request of a Commissioner (not Mr. Scanlon) before the vote to get an idea of OMB's reaction to the survey. The Executive Director said he contacted OMB after the Commissioners voted only to discuss an ATV hearing and other events in California that the OMB official attended. That official told us that he had frequent contacts with the Executive Director both before and after the Commission voted. He said at no time did the Executive Director attempt to undermine the Commission decision.

One CPSC employee who is CPSC's contact with OMB refused to be interviewed.

4. **Allegation:**

Significantly in advance of an ATV hearing in New Hampshire, Mr. Scanlon arranged for a private meeting with ATV industry representatives to be set up for the following day. Although at least one other Commissioner and staff were at the public hearing, the meeting was not listed on CPSC's public calendar and none of them were told of the meeting. At the last minute, Mr. Scanlon apparently realized the risk he was taking and, instead of attending, had the Executive Director run the meeting.

GAO Findings:

With the exception of not notifying the Commissioner and staff, these allegations are unsubstantiated. During our interviews, we did not get consistent stories of the events leading up to the private meeting on July 26, 1985. It appears, however, that it was arranged only shortly before the July 25, 1985, New Hampshire public hearing. The official who chairs the ATV task force said he arranged the meeting. He told us that Mr. Scanlon wanted to have the meeting in Washington the week after the public hearing. The official said that he suggested that it be in New Hampshire since it would be more convenient for the industry representatives who would be there. He said that he spent time on the phone about 2 or 3 days before the public hearing trying to coordinate the meeting with the industry representatives. He also said that apparently Mr. Scanlon had decided not to attend at least 2 days before the meeting based on a note that this official had in his files to prepare a public calendar notice on July 24, 1985, for the Executive Director to meet with the industry representatives on July 26, 1985. The official, who did not attend the meeting, said that on July 24, 1985, he (1) prepared a public calendar notice (which was published on July 31, 1985), (2) had the meeting posted on CPSC's master calendar, and (3) requested a waiver of the 7-day advance notice requirement.

Mr. Stuart Statler, the only Commissioner other than Mr. Scanlon who attended the public hearing, said he was not told about the meeting by any of the CPSC attendees. The Executive Director said he did not know if Mr. Statler was aware of the meeting.

5. **Allegation:**

On September 11, 1985, Mr. Aaron Locker, Counsel for the Toy Manufacturers of America and the Juvenile Products Manufacturers Association and a trusted confidante to Mr. Scanlon, met with Mr. Scanlon in his office. The meeting was never listed on the public calendar, nor was a written log filed on the meeting.

GAO Findings:

We found no evidence to substantiate the allegations. In his October 2, 1985, response, Mr. Scanlon said that Mr. Locker is not a confidante of his. He said he saw Mr. Locker only for a matter of seconds in a public hallway on September 11, 1985, and has not met with Mr. Locker since he became Chairman. Mr. Locker confirmed the hallway encounter, told us that he did not remember having any meetings with Mr. Scanlon after Mr. Scanlon became Chairman, and said he had no recollection of ever being in Mr. Scanlon's office area during 1985. Mr. Locker said that his relationship with Mr. Scanlon was purely professional and that he did not consider himself a friend or confidante. None of the people interviewed said they had seen Mr. Locker and Mr. Scanlon meet since Mr. Scanlon became Chairman.

6. **Allegation**:

Two weeks after the CPSC enforcement staff wrote a letter to the manufacturers of V-shaped baby gates urging them to cease production of this design, Mr. Scanlon criticized the Chief of Enforcement during a closed Commission meeting and wrote a memorandum criticizing the Chief for exceeding his authority. Two days later, Mr. Locker wrote the Chief complaining about what he claimed amounted to a ban by one agency official mimicking Mr. Scanlon's presumably private complaint. In addition, the entire industry quickly learned of Mr. Scanlon's complaint and backpedaled on their promise to cease production.

GAO Findings:

While the specific improprieties involved in the allegation are unclear, they appear to be (1) criticizing the Chief of Enforcement and (2) disclosing what happened at a closed meeting.

We found no evidence of improprieties. Mr. Scanlon was not the only Commissioner (he was not Chairman at the time) to question the propriety of the letter. We found no evidence that he disclosed what happened at the meeting. Mr. Scanlon said he did not pass on any information about the meeting to Mr. Locker or anyone else.

Mr. Locker told us that he had not received any information from, or had any contacts with, Mr. Scanlon or anyone else in Mr. Scanlon's office in connection with baby gates. He said he learned that the letter was a staff request rather than a Commission request during a meeting with the enforcement staff on November 19, 1984, 9 days before he wrote his letter.

Our review of the official summary of the meeting, at which other industry representatives were also present, showed that Mr. Locker had asked if the Commissioners were informed of the meeting. He was told by the Chief of Enforcement that they were informed and that the actions sought (stopping production and distribution of the gates) were a staff position and recommendation and not a Commission position.

7. **Allegation**:

Following a routine congressional inquiry, Mr. Scanlon arranged from his vacation home to unilaterally amend a consent agreement with Emerson Electric, an act that is not permitted by the statute. He directed the Executive Director to order the enforcement staff to send Emerson a letter relieving it of certain compliance aspects of the agreement. His orders were carried out without notice even to the other Commissioners.

GAO Findings:

While Mr. Scanlon initiated action to get the Emerson matter resolved expeditiously, we found no evidence that he directed how the matter be resolved or that the relief granted Emerson was inappropriate.

Mr. Scanlon advised us that he told the Executive Director only to find out why the matter was not resolved after he noted a status inquiry on a weekly congressional report. He said a similar inquiry had been made about 2 months before. The Executive Director told us that he called the enforcement staff to get the matter moving. The enforcement official that the Executive Director contacted confirmed that the request was limited to expediting the matter.

The Chief of Enforcement told us that he had previously considered modifying the agreement but modification would involve time-consuming procedural requirements. Had he taken that approach, he would have gone to the Commission. Instead, to expedite resolution, he wrote Emerson's attorney that his office would not recommend enforcement action if Emerson did not comply with the provision involved.

The provision of the agreement involved was included at the request of Emerson and was not a subject of CPSC concern. The issue for the CPSC staff was how, rather than whether, to relieve Emerson from that provision. One Commissioner told us that he learned of the Emerson letter only when these allegations were made and that he intends to look into the matter further.

8. **Allegation:**

A letter from Mr. Robert Sussman, who represents Essex Company, makes knowing references to matters contained in a restricted briefing package that was not to be disseminated outside CPSC. Mr. Scanlon and his personal staff have held at least one unlogged meeting with Mr. Sussman. In a memorandum, Mr. Scanlon used arguments to the CPSC staff that tracked closely those of the Essex counsel. There is an unavoidable presumption that Mr. Scanlon or his staff inappropriately shared briefing materials and restricted Commission deliberations with Mr. Sussman.

GAO Findings:

The allegations are unsubstantiated. Mr. Scanlon has stated that neither he nor, to his knowledge, his staff have had any meetings or shared restricted briefing packages with Mr. Sussman. None of the CPSC employees we interviewed said that they had seen Mr. Sussman meet with Mr. Scanlon or any of his staff.

Mr. Sussman told us that he has had no meetings with Mr. Scanlon or his staff on the Essex case, nor has he received or seen a briefing package on the case. Mr. Sussman said that he has met with Mr. Scanlon twice--once before Mr. Scanlon was Chairman (the allegations involve a period after Mr. Scanlon was Chairman) and once when Mr. Sussman made a presentation at a formal briefing. Mr. Sussman said he had two telephone contacts with one of Mr. Scanlon's staff members on the Essex case. Based on his description of the contacts, they seemed appropriate.

Mr. Sussman said that the information he received from CPSC about the Essex case came from routine contacts with the compliance staff while discussing possible settlement of the matter. He said such contacts provided insight but not a complete picture of what was in the briefing package.

9. **Allegation:**

Mr. Scanlon has consistently referred to the furniture industry program to reduce upholstered furniture fires as successful and has attempted to reduce or eliminate CPSC resources to deal with upholstered furniture fires. CPSC's Executive Director delayed a staff report and Commission briefing on the problem and insisted that the report (1) conclude that the industry is doing all that it can and (2) make no strong recommendations for further industry action.

GAO Findings:

We found no evidence of improper conduct. Mr. Scanlon's views on the level of resources that CPSC should devote to reducing upholstered furniture fires is a policy issue. The Commission decides the level of funding for the program. The Program Manager, Fire and Thermal Burn Hazards, told us that the Executive Director did not insist on changes to the staff report. He said the report, including its recommendations, was developed by the staff and the staff stands behind it.

10. **Allegation:**

The Commission voted to have its Chronic Hazard Advisory Panel review the carcinogenicity of a chemical in all consumer products. The next day, Mr. Scanlon wrote a letter to the panel members instructing them to review only children's products--a scope favored by him and industry but repudiated by other Commissioners. When the misdirections were discovered, the other Commissioners insisted that a new letter be sent.

GAO Findings:

The allegation implies that the words limiting the panel's scope to children's products were intentional. We could not determine if that is correct. Mr. Scanlon told us that he thought his initial letter represented the Commission's consensus on the scope of the panel review, and he did not intend to mislead the panel. When the fact that his letter had limited the panel's scope to children's products was brought to his attention, he immediately wrote another letter. The corrected letter was distributed the next day.

11. **Allegation:**

Mr. Scanlon authorized expenditures for two pilot studies in hospital emergency rooms on whether consumer behavior was involved in injuries although other Commissioners were opposed to such studies.

GAO Findings:

We believe that this is a policy issue. The Commission had not prohibited such pilot studies at the time, and the Commissioners' approval was not required for the amount of funds involved, reportedly $1,500 for each study.

12. **Allegation:**

The allegation describes a disagreement between Chairman Scanlon and Commissioner Statler on injury and safety data, with each accusing the other of using inaccurate or misleading data.

GAO Findings:

This allegation involves a difference of opinion between Messrs. Scanlon and Statler on which data are more appropriate. Both of them believe they have properly used data. We did not make a judgment on which data are more appropriate.

13. **Allegation:**

Mr. Scanlon's September 10, 1985, testimony before the Senate Commerce, Science, and Transportation Committee that product hazard reports from industry had increased during 1985 was misleading because he did not reveal that CPSC guidelines adopted 18 months prior to his testimony had doubled the voluntary reporting of hazards.

GAO Findings:

We see no significance to the allegation, which implies that Mr. Scanlon should not take credit for increased reporting that resulted from an action that took place before he became Chairman. In any case, Mr. Scanlon voted for the guidelines that are alleged to have resulted in increased product hazard reports.

14. **Allegation:**

Mr. Scanlon has been associated with scurrilous activities to scuttle the nomination for CPSC Chair of Ms. Camille Haney. He is known to have helped prepare a non-byline article for Human Events which condemns Ms. Haney by association and attempts to embarrass Senator Bob Kasten for recommending her.

GAO Findings:

We found no conclusive evidence on these allegations. Mr. Scanlon told us that he had not prepared or provided anything to the media relating to Ms. Haney. Mr. Scanlon's staff indicated that they knew nothing of any actions by Mr. Scanlon to criticize Ms. Haney.

One person we interviewed said that an employee from Mr. Scanlon's office had showed her an article about Ms. Haney which she indicated was prepared by Mr. Scanlon's office. She said the article appeared 2 or 3 days later in the Washington Times or Human Events. We were unable to interview the person who showed her the article because she refused to be interviewed. (See Allegation 1.)

One employee in Mr. Scanlon's office told us that she delivered an envelope to the Washington Times on March 11, 1985. She said that, when she submitted her taxi voucher for the trip, Mr. Scanlon instructed her to change the destination so that it would not show the Washington Times. She said she did not know the contents of the envelope or remember the addressee's name. One week later an editorial critical of

Ms. Haney entitled "Kasten Zany for Haney" appeared in the Washington Times.

Mr. Scanlon told us that the material delivered to the Washington Times was a draft article on poison prevention that he hoped to have published during Poison Prevention Week. He gave us a copy of the draft article and a similar article that had been published in the Washington Times on March 19, 1984. He said the article submitted this year was not published.

He told us that he had the voucher altered so CPSC employees would not see that he was sending material to the Washington Times. He believed if other CPSC officials knew he was sending material to the newspaper, they might try to do so also and he could lose press coverage. He would not give us the name of the reporter to whom the article was sent but said he would give the name to the Committee.

15. **Allegation:**

> Mr. Bert Simson, a Senior Executive Service employee who was the Deputy Executive Director of CPSC, was detailed to another CPSC position in disregard of the intent of a law that prohibits the involuntary reassignment of a career appointee within 120 days after the appointment of the head of an agency. The purpose of the prohibition was to give the career appointee an opportunity to demonstrate his expertise to the new management. Also, Mr. Scanlon told several people that he wanted to "dump" Mr. Simson around the time he became Chairman.

GAO Findings:

The detailing of Mr. Simson to another position about a month after Mr. Scanlon became Chairman did not give him the opportunity to demonstrate his ability to perform as Deputy Executive Director. At Mr. Simson's request, the personnel action was reviewed by the Special Counsel of the U.S. Merit Systems Protection Board. Based on the legal distinction between a detail and a reassignment, the Special Counsel determined that there was no evidence of a prohibited personnel practice or activity. Our office has no legal basis for concluding otherwise.

Three of the people we interviewed said that Mr. Scanlon had said or indicated, around the time that he became Chairman, that he did not want to keep Mr. Simson in the Deputy Executive Director position. Several other people said that management improvements were needed in the organization to which Mr. Simson was detailed and that Mr. Simson had strong management skills.

Mr. Scanlon told us that Mr. Simson was detailed because his management skills were needed to take care of problems in the unit to which he was detailed rather than to get him out of the Executive Director's office. He said he had made no comments about moving Mr. Simson from the Deputy Executive Director position once he became Chairman.

16. **Allegation:**

Mr. Scanlon required CPSC personnel to work overtime but refused to pay them for it.

GAO Findings:

We did not identify anyone who worked overtime for Mr. Scanlon without pay other than the individual discussed in Mr. Scanlon's October 2, 1985, response. Mr. Scanlon told us that when he hired that individual, she was aware that she would be working more than a 40-hour workweek. After working for him for many months, she claimed overtime on her timecard. He did not think she was entitled to overtime because she was a Schedule C employee.[1] After learning from the personnel office that she was entitled to overtime, she was paid when she worked any overtime. This occurred before Mr. Scanlon became Chairman.

We were unable to get the views of the individual involved because, as discussed in Allegation 1, she refused to be interviewed.

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[1] Schedule C employees serve in policymaking positions or positions requiring a close confidential relationship with an agency head.

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United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510

December 4, 1985

Mr. Terrence M. Scanlon
Chairman
Consumer Product Safety Commission
1111 18th Street, N. W.
Washington, D. C. 20207

Dear Mr. Scanlon:

As you know, the Senate Committee on Commerce, Science, and Transportation has been investigating allegations made against you. We asked the GAO to assist us in that investigation.

One of the allegations made is that you used government staff, equipment, and facilities to perform work for the "right-to-life" movement and for your personal business transactions. You have denied these allegations in writing, in sworn testimony to GAO investigators, and in private conversations with Members and staff of the Committee.

The GAO was not able to substantiate this allegation because of an employee's refusal to be interviewed. We felt that it was necessary to hear from this employee, so we arranged for a private meeting.

The employee in question described tasks of a personal or private nature which had been performed during the past few years. One of those tasks was to type a letter on D. C. Right to Life Committee stationery. A number of tasks dealt with private business transactions, usually involving some typing and xeroxing. There were several letters to the editor relating to "right-to-life" matters. The remainder was private correspondence, often dealing with church-related matters. The employee showed members of the Committee staff documentary evidence of this work.

The employee said that a "busy" week of personal business might include as much as two or three hours of such work. A "quiet" week would involve none.

We request that you respond to this employee's statements in light of your earlier categorical denials of private use of the Commission's staff and facilities.

Sincerely,

Fritz Hollings

Ernest F. Hollings

Jack Danforth

John C. Danforth

UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION

December 5, 1985

The Chairman

The Honorable John C. Danforth
Chairman
The Honorable Ernest F. Hollings
Ranking Minority Member
Committee on Commerce, Science, and
Transportation
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman and Ranking Minority Member Hollings:

This is in answer to your letter of December 4, 1985, which followed up a report by the General Accounting Office on a series of allegations made by Joan Claybrook, President of Public Citizen. You have asked me to respond to a presentation of evidence made to you privately by an employee of the Consumer Product Safety Commission who, notwithstanding my encouragement to all CPSC employees to cooperate, declined to be interviewed by GAO investigators.

It appears that the employee who you interviewed is one of my personal staff members and a fellow non-career appointee. I am pleased that you spoke with this individual, for this ensures that the inquiry has been as complete as possible. Of the more than 40 people interviewed by the GAO, no one at the Commission could be more familiar with the most intimate details of my daily routine than this employee. Let me say further that over the nearly three years that we have been together at the Commission, this employee has been a valued member of my non-career team.

In specific response to your letter, it appears that this personal staff member provided you with certain personal documents. After reviewing your letter and speaking with your staff about these documents and the employee's statements, my best recollection is that, over the three year period I have served at the Commission, this employee did type or copy a personal letter or document for me on occasion. However, these occasions were very sporadic and limited in number and I think that this GAO investigation has shown this was in no way a regular practice.

With respect to right-to-life matters, as I stated to GAO investigators, since becoming a member of the Commission, my private involvement in right-to-life activities has not consumed more than a handful of hours. Indeed, this is a decrease in the amount of time I devoted to such activities before my appointment early in 1983. The reason, simply, is that from the day I arrived at the CPSC, I have taken the duties and responsibilities of a Commissioner, and then of a recess Chairman, very seriously. In fact, I have regularly maintained an approximate 72-hour workweek. Although I do not think this schedule is atypical for many Presidential appointees, and particularly Agency heads, it plainly has the potential to lead to the mixing of public and private affairs. Such instances would in this case be highly sporadic and entirely innocent of any intent to misappropriate government resources. However, I fully acknowledge that even one instance should be avoided.

It is certainly true, as I explained to the GAO investigators, that I have on occasion asked a personal secretary, in the interests of efficiency, to run a personal errand on my behalf. However, after 16 years in the career civil service, this is my first non-career appointment and my first exposure to hiring non-career appointees. At that time, I did not consider these requests inappropriate, as they were intended to be fulfilled on private time. I wish to assure the Committee that I have already taken steps to maintain the strictest separation between public and private business, and will not permit anyone employed at the Commission, including those on my non-career staff, to perform any work that could in any way be viewed as personal in nature.

I have taken the allegations made to this Committee seriously and have attempted at all times to respond based upon my best recollection as accurately as possible. At the time of my prior statements I did not recall the instances in which the employee with whom you spoke performed any personal or private matters on my behalf. I certainly did not intend to mislead the Committee, its staff or the GAO in any way. I hope that this letter has cleared the record and satisfies any remaining questions.

Thank you for this opportunity to respond.

Sincerely,

Terrence Scanlon

Terrence Scanlon
Chairman

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WM. MICHAEL KITZMILLER, STAFF DIRECTOR
THOMAS M. RYAN, CHIEF COUNSEL

U.S. House of Representatives
Committee on Energy and Commerce
Room 2125, Rayburn House Office Building
Washington, DC 20515

December 11, 1985

The Honorable John C. Danforth
Chairman
The Honorable Ernest F. Hollings
Ranking Minority Member
Committee on Commerce, Science,
and Transportation
United States Senate
Washington, D. C. 20510

Dear Mr. Chairman and Ranking Minority Member Hollings:

This letter is with reference to your consideration of the nomination of Terrence M. Scanlon for Chairman of the Consumer Product Safety Commission (CPSC).

We are writing to urge that your Committee and the Senate not act on this nomination until the completion of Department of Justice proceedings and a decision has been made regarding whether Mr. Scanlon's conduct in this case warrants prosecution under the laws of the United States. Questions have been raised, for example, about the truthfulness of some of Mr. Scanlon's statements. As you know, 18 U.S.C. Section 1001 provides that

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

A copy of our letter, referring this matter to the Department of Justice, is enclosed for your information.

The record shows clearly that Mr. Scanlon became Chairman of the CPSC in January 1985 pursuant to a recess appointment made in late 1984 after the former chairman resigned. During September hearings before your Committee on Mr. Scanlon's nomination, Ms. Joan Claybrook, President of Public Citizen, made a number of allegations about Mr. Scanlon. One of the allegations was that Mr. Scanlon used government staff, equipment, and facilities to perform work for the "right-to-life" movement and personal business transactions. Mr. Scanlon denied these allegations in writing to the Committee, in sworn testimony to General Accounting Office investigators, and in oral statements to Members and staff of the Committee.

Subsequent events -- uncontroverted documentary evidence and statements of a CPSC employee -- on their face raise serious questions whether Mr. Scanlon perjured himself and withheld material documents.

This is not the caliber of person that we want serving in such a position of responsibility and trust. At a minimum, Mr. Scanlon's conduct evidences remarkably bad judgment; at a maximum, it shows a clear disrespect for the laws of this Nation and the Congress.

Thank you for your consideration of our views.

Sincerely,

JOHN D. DINGELL
Chairman, Committee on
Energy and Commerce

Henry A. Waxman
HENRY A. WAXMAN
Chairman, Subcommittee on
Health and the Environment

Enclosure

cc: Honorable James T. Broyhill
Honorable Edward R. Madigan
Honorable Edwin Meese III

NINETY-NINTH CONGRESS

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WM. MICHAEL KITZMILLER, STAFF DIRECTOR
THOMAS M. RYAN, CHIEF COUNSEL

U.S. House of Representatives
Committee on Energy and Commerce
Room 2125, Rayburn House Office Building
Washington, DC 20515

December 11, 1985

The Honorable Edwin Meese III
Attorney General of the United States
Department of Justice
Constitution Avenue and Tenth Street, N.W.
Washington, D. C. 20530

Dear Mr. Attorney General:

I invite your attention to the enclosed documents regarding an investigation of Terrence M. Scanlon, nominee for Chairman of the Consumer Product Safety Commission (CPSC). The Committee is looking into this matter pursuant to the authority of Rules X and XI of the Rules of the U. S. House of Representatives.

As the enclosed letter to Senators Danforth and Hollings from Representative Waxman and me indicates, we have asked that the Senate not act on the Scanlon nomination until the Department has conducted an investigation and determined whether any laws of the United States have been violated.

The November 20, 1985, General Accounting Office Briefing Report, the December 4 letter from Senators Danforth and Hollings to Mr. Scanlon, and Mr. Scanlon's December 5 response to the Senators' letter appear to present facts which raise serious questions whether there has been wrongdoing and potential criminal conduct. It is because of this circumstance that we refer the matters outlined more fully in the enclosures, and in summary below, for investigation and consideration of prosecution.

The CPSC is an independent regulatory agency that administers provisions of several laws relating to product safety. CPSC has five Commissioners, one of whom is the Chairman. The Chairman, as CPSC's principal executive officer, is responsible for all executive and administrative functions. In carrying out such functions, the Chairman is to be governed by CPSC's general policies.

Terrence M. Scanlon, who became a CPSC Commissioner in March 1983, became Chairman in January 1985 pursuant to a recess appointment made in late 1984 after the former Chairman resigned.

During September 10, 1985, hearings held on Mr. Scanlon's nomination to be Chairman by the Senate Committee on Commerce, Science, and Transportation, Ms. Joan Claybrook, President of Public Citizen, made a number of allegations about Mr. Scanlon. In a September 23 letter, Ms. Claybrook provided information to the Senate Commerce Committee to supplement her testimony and her comments. Mr. Scanlon, at that Committee's request, responded to Ms. Claybrook's testimony on September 13 and to her letter on October 2, categorically denying all allegations against him.

At the request of the Senate Commerce Committee, the General Accounting Office (GAO) conducted an investigation of the allegations made in Ms. Claybrook's September 23, 1985, letter. They interviewed 38 present or former CPSC employees, two attorneys that practice before CPSC who were named in Ms. Claybrook's allegations, and an Office of Management and Budget (OMB) official who was said to have knowledge about one allegation. Two CPSC employees refused to be interviewed because GAO could not assure confidentiality and job protection. Except for two persons interviewed by telephone -- an attorney in New York City and a former employee who was said to be moving from the area shortly -- the people interviewed provided their information under oath.

One allegation was that Mr. Scanlon had, both at the Department of Commerce, where he was formerly employed, and at CPSC, used government staff, equipment, and facilities to perform work for the "right-to-life" movement and for his personal business transactions, including real estate property he owns and leases.

The GAO indicated that they did not attempt to verify the allegations as they related to Mr. Scanlon's employment at the Department of Commerce because of the short time they had to complete their review and the long time that had elapsed since he was employed at the Department.

Under oath, Mr. Scanlon told GAO investigators that he never used government staff, equipment, or facilities to perform work for the "right-to-life" movement or for his outside business interests while at CPSC.

In direct contravention of this and earlier denials by Mr. Scanlon, a subsequent employee interview and documentary evidence presented to the Senate Commerce Committee raise serious questions about whether Mr. Scanlon perjured himself and withheld material documents. There were typed letters relating to church matters, personal or private business (e.g., personal finances, investments, health insurance, schools, etc.), letters to the editor and other government officials, and at least one letter on D.C. Right to Life Committee stationery, among other items.

Accordingly, we request that the Department conduct the necessary investigation to provide it with sufficient information to assess whether any laws of the United States have been violated and if so whether the Department will proceed against Mr. Scanlon. At the conclusion of your investigation, please provide the Committee with copies of any Departmental (including FBI) documents relating to a recommendation to seek an indictment of Mr. Scanlon or to decline such prosecution, including any memoranda in support of or critical of the decision that is made.

We trust that we can look forward to your cooperation. If you have any questions, please do not hesitate to call us or Ms. Washington (225-2927) of the Committee staff.

Sincerely,

JOHN D. DINGELL
Chairman, Committee on
Energy and Commerce

HENRY A. WAXMAN
Chairman, Subcommittee on
Health and the Environment

Enclosures

BILL D. COLVIN, TO BE INSPECTOR GENERAL, NASA

MONDAY, SEPTEMBER 16, 1985

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The committee met, pursuant to notice, at 9:30 a.m., in room 253, Russell Senate Office Building, Hon. Slade Gorton presiding.

Staff members assigned to this hearing: Macky Ayers, Pete Perkins, professional staff members; and Marty Kress, minority staff counsel.

OPENING STATEMENT BY SENATOR GORTON

Senator GORTON. Welcome to this hearing of the Committee on Commerce, Science, and Transportation as we consider today the nomination of Bill D. Colvin, as inspector general of the National Aeronautics and Space Administration.

More than ever, as each Federal agency competes for scarce resources, it is important that each agency manage its programs and activities in the most efficient and effective manner possible. Fraud and mismanagement are abuses that cannot and should not be tolerated.

Herein lies the importance of the inspector general and his staff in conducting audits and investigations that are designed to ferret out waste, fraud, mismanagement, and inefficiencies from each respective agency.

The administration's nominee for inspector general of NASA, Bill Colvin, has been serving as acting inspector general of NASA since March. Six months prior to this he served as NASA's deputy inspector general. Before joining that agency in 1983, Mr. Colvin served as a special agent with the FBI for approximately 10 years.

NASA's inspector general can not only have a significant impact on our Nation's aeronautics and space endeavors, but can also play a critical role in maintaining that sense of honesty and propriety which is so crucial to our way of Government.

With this in mind, we are pleased to consider this morning the nomination of Bill Colvin as inspector general of NASA. At this point, I invite him to make any opening statements he may wish to submit to us. First, both Senators Trible and Hollings have statements which will be included in the record at this point along with the biographical shetch.

[The material referred to follows:]

OPENING STATEMENT BY SENATOR TRIBLE

Mr. Chairman, I am pleased to support the nomination of Bill Colvin of Virginia to be NASA's Inspector General.

Bill comes to us with an outstanding background and record of achievement. He has received awards for his outstanding service on numerous occasions. Of particular note is the Paul R. Boucher Public Service Award presented by President Reagan in microcomputer technology in the Offices of Inspectors General throughout the Federal Government.

Bill's career in law enforcement began with the Federal Bureau of Investigation in 1972. He has advanced steadily throughout the years, holding positions in all levels of law enforcement including investigative, supervisory and managerial.

He joined NASA in 1983 as the Assistant Inspector General for Technical Services and since March of this year has served as Acting Inspector General and Deputy Inspector General. In this position he has been responsible for investigation of procurement and contract-related fraud and waste.

One look at Bill's accomplishments at NASA will certainly show his leadership and ability. I urge the Committee to act swiftly and favorably on this nomination.

OPENING STATEMENT BY SENATOR HOLLINGS

Mr. Chairman, this morning we consider the nomination of Bill D. Colvin to be Inspector General of NASA.

At a time when the public has lost confidence in the government's contracting activities and its ability to oversee and manage major programmatic activities, it is important that men of the highest level of integrity and qualifications fill the Office of Inspector General.

In the course of today's hearing I am optimistic that the Committee will be most impressed with Mr. Colvin's qualifications and with the personal integrity that he will bring to the Office of Inspector General of NASA.

In reviewing Mr. Colvin's background information, I have discovered a dedicated federal employee and law enforcement officer who is uniquely qualified to be the Inspector General of NASA.

I look forward to Mr. Colvin's testimony and to his description of the perceived role and priorities that his office will pursue within NASA. I also am interested in Mr. Colvin's assessment of the current state of affairs in government contacting and what this Committee can do to help his office restore public confidence and eliminate waste, fraud and abuse from the contracting process.

BIOGRAPHICAL SKETCH OF BILL D. COLVIN

Address: (a) residence: 5 Horseshoe Circle, Fredericksburg, VA; (b) work: NASA Headquarters, Code W, 400 Maryland Avenue, SW, Washington, DC.

Date of Birth: June 7, 1940.

Place of Birth: Clovis, New Mexico.

Marital status: Bobbie (Smith) Colvin, May 30, 1959.

Children: Jeffrey Zane Colvin, Age 15; Leah Susanne Colvin, Age 8.

Education: Eastern New Mexico University, Portales, New Mexico, Master of Business Administration (MBA) 1969–71.

Eastern New Mexico University, Portales, New Mexico, Bachelor of Business Administration (BBA), Cum laude, 1965–69.

Employment record: National Aeronautics and Space Administration, Washington, DC, Inspector General (Acting), March 10, 1985–Present; Deputy Inspector General, September 19, 1984–March 10, 1985; Assistant Inspector General for Technical Services, February 6, 1983–September 19, 1984; Federal Bureau of Investigation, Washington, DC, Special Agent (Supervisory), June 11, 1972–February 6, 1983.

STATEMENT OF BILL D. COLVIN

Mr. COLVIN. Thank you, Senator.

Mr. Chairman, members of the committee, I am very pleased to have this opportunity to testify in support of my nomination as inspector general of the National Aeronautics and Space Administration [NASA]. I have provided biographical and other specific information to the committee, which I will not attempt to reiterate here. If I may, I will briefly provide a summary of my qualifications for the position of inspector general. In addition, I will provide a glimpse of the areas I am interested in pursuing should I be confirmed as Inspector General of the National Aeronautics and Space Administration.

I have been a career law enforcement employee since 1972, and have held increasingly responsible positions at both the Federal Bureau of Investigation and the National Aeronautics and Space Administration. I have testified before Federal grand juries and in State and Federal courts.

I have conducted management analyses and recorded appropriate administrative or managerial recommendations to promote economy and efficiency in governmental EDP operations. I have broad experience in developing Federal programs.

As Deputy Inspector General at NASA I am responsible for a balanced audit and investigative program directed primarily in the area of procurement and contract-related fraud and waste.

As Inspector General, I intend to continue to enhance the efficiency and productivity of staff auditors and investigators. My emphasis will continue to be procurement and contract-related activities with a goal toward contributing to the restoration of America's confidence in a reformed public contract environment.

I would be pleased to answer any questions you might have.

[The statement follows:]

STATEMENT OF BILL D. COLVIN

Mr. Chairman and Members of the Committee, I am very pleased to have this opportunity to testify in support of my nomination as Inspector General of the National Aeronautics and Space Administration. I have provided biographical and other specific information to the Committee which I will not attempt to reiterate here. If I may, I will briefly provide a summary of my qualificatioins for the position of Inspector General. In addition, I will provide a glimpse of the areas I am interested in pursuing should I be confirmed as Inspector General of the National Aeronautics and Space Administration.

I have been a career law enforcement employee since 1972 and have held increasingly responsible positions in both the Federal Bureau of Investigation (FBI), and the National Aeronautics and Space Administration (NASA). I have served, and been commended, at all levels of law enforcement including investigative, supervisory, and managerial. I have an advanced degree (MBA), and have attended the finest law enforcement training available, augmenting that training on a continuing basis.

Throughout my law enforcement career, I have reviewed and consulted on numerous fraud investigations and have personally applied Electronic Data Processing (EDP) technology to complicated contract fraud cases. As an authority in computer crime, I conducted, participated in, and testified in computer crime cases, as well as coordinated the execution of search warrants in EDP environments. I have testified before Federal Grand Juries, and in state and Federal courts.

As manager of the FBI Computer Center resources, I conducted management analyses and recorded appropriate administrative and/or managerial recommendations to promote economy and efficiency in Governmental EDP operations.

I have broad experience in developing Federal Programs. During 1983-84, I served as the Project Coordinator of the Computer Audit Committee of the President's Council on Integrity and Efficiency (PCIE). This project required coordination among Federal agencies and its accomplishments were recognized by special awards from the PCIE. In August 1984, I received the Paul R. Boucher Public Service Award from President Reagan in recognition of "successful development of Microcomputer Technology usage in combatting waste, fraud and mismanagement in the Federal Government."

As Deputy Inspector General at NASA, I am responsible for a balanced audit and investigative program directed primarily in the area of procurement and contract-related fraud and waste. Since over 80 percent of NASA's budget is allocated to procurement, it is not surprising that a significant amount of the activity of the Inspector General staff is directed against contract fraud, other contract-related crimes, as well as non-criminal procurement irregularities and wasteful spending.

The NASA Inspector General's Office is well managed and staffed with dedicated professionals. As Inspector General I intend to continue to enhance the efficiency and productivity of staff auditors and investigators through increased use of automated techniques. My emphasis will continue to be procurement and contract related activities with a goal of contributing to the restoration of America's confidence in a reformed public contract environment.

I would be pleased to answer any questions you might have.

Senator GORTON. Thank you, Mr. Colvin. Your entire written statement will be included in the record.

During the period of time that you have been acting inspector general, what standards have you utilized in determining whether or not to investigate an allegation when that allegation is based on an anonymous complaint?

Mr. COLVIN. In response to that question, the NASA Office of Inspector General has had published within NASA its standards for determining whether or not to investigate an allegation. The standards apply equally, regardless of whether the complaint is from a known or an anonymous source. These standards are written and distributed throughout NASA, and include the following:

It is NASA policy to conduct an investigations program in conformance with the Inspector General Act as well as other applicable laws, Executive orders, and Federal regulations. Allegations of Federal criminal violations involving NASA employees, contractors, grantees, or contractor or grantee employees will be investigated to the extent necessary to determine if reasonable grounds exist to believe there has been a violation of Federal criminal law.

Allegations of violations of regulations or of any act or omission of any act that may contribute to waste, inefficiency, or overall operational ineffectiveness of NASA which do not constitute Federal criminal violations may be investigated by the inspector general. Sufficient investigation will be conducted to determine whether any recommendations for administrative or management action are indicated.

Senator GORTON. So from a preliminary standpoint it does not matter whether the allegation is anonymous or has a specific source. You are going to look at least on a preliminary basis at everything?

Mr. COLVIN. That is correct.

Senator GORTON. What outside controls govern the authority of the Office of the Inspector General legislatively or otherwise?

Mr. COLVIN. The watchdog has many watchers. Under the Inspector General Act, the inspector general is charged with keeping the head of the agency as well as the Congress fully informed about problems and difficulties through the use of a semiannual report and otherwise.

As acting inspector general, I personally report to Adminstrator Beggs about IG activities about which he should be concerned and steps taken for corrective action. The inspector general oversight committees have periodically requested information concerning IG audits and investigations, and where the law allows we have been responsive to those requests. Also, the Office of Management and Budget through the President's Council on Integrity and Efficiency, an entity established by Executive order, has organized committees and activities of interest to the inspector general community.

Moreover, the General Accounting Office under authority of its various enabling statutes has audited inspector general functions as an adjunct to legislative oversight. Both the director of the Office of Government Ethics and the special counsel of the Merit Systems Protection Board have statutory authority to request investigative assistance of the inspectors general.

Finally, the public provides a check on possible abuse of power by an inspector general since many of our reports are available to the general public, particularly in the audit area. An inspector general will rise or fall on the credibility and quality of those reports.

On the other hand, while these external forces provide a check on the IG, the inspector general was created with a view toward substantial autonomy and independence from undue outside or agency influence or control.

Should my independence ever be threatened to the point that I can no longer function as the inspector general was statutorily intended, I will not hesitate to exercise my powers to report immediately the circumstances to the head of the agency or to the Congress as the circumstances warrant.

Senator GORTON. Let me go back to my first question again. I gather from your answer to the first question that during the time that you have been acting inspector general, you have not changed significantly the thrust of the philosophy of the office.

Mr. COLVIN. That is correct.

Senator GORTON. What kind of incentives and mechanisms exist within the office to assure that while every allegation is appropriately investigated, those investigations do not involve an undue amount of time or expense to the Government?

Mr. COLVIN. Sir, I share your concern that investigations can be lengthy, complicated, and costly. Therefore, I have instituted several management controls to ensure the efficiency of the investigative program.

Each investigative matter is tracked from its opening to its closing through a centralized electronic management information system. This system represents an early warning device for the management of investigations. I also receive a monthly status report on all investigations conducted during the previous month. This report is both statistical and narrative in nature, and represents an effective means of measuring progress on any case.

Furthermore, I have instituted a policy of case prioritization by field investigative managers where each case will be either considered high, medium, or low priority, and worked accordingly. Also, at least every 90 days each case in the field must be reviewed by the investigative manager with the person conducting the investigation. Each investigator is encouraged to formulate an investigative plan for all important cases that would provide a clear picture of milestones, focus, and anticipated productivity for each case.

Finally, these controls are reviewed periodicially by my headquarters investigative management through an onsite standards review process.

Senator GORTON. Both the House and Senate in their versions of the 1986 authorization bill give the staff of your office statutory authority to administer oaths during the course of investigations and audits. We hope that we will get an authorization bill passed that will be signed by the President.

If we do so, what added assistance will that give to your office, and will it give to your office any potential for abuse?

Mr. Colvin. I do not believe that oath administration authority will be abused by the Office of Inspector General. Many inspector general offices already have this authority under other statutes, yet I am unaware of any abuse resulting from its exercise. Should this legislation be enacted, I have already asked my attorney advisor to draft guidelines on the proper method and circumstances under which oaths are to be utilized. The objective of the legislation is to promote truthfulness through the solemnity of the oath.

I believe this will have a salutary effect, particularly in critical interviews where credibility is at issue and corroboration is difficult to ascertain. I also wish to point out that under the current law, there is no legal obligation to compel a non-Government witness to consent to an interview with an inspector general investigator. The oath administration authority will not change this. However, in the future, when a witness does consent to an interview, we will now have the ability to conduct the interview under oath.

Senator Gorton. Your office recently completed an investigation of a suspected leak of sensitive information relating to the consideration by NASA's source evaluation board of four proposals for the shuttle marketing award.

Apparently the investigation also addressed an alleged lack of control over sensitive computer software and documents related to this award competition.

Tell me what the final outcome of that investigation was, whether or not you found any culpability within NASA itself, any control deficiencies you came up with, and any recommendations which you propounded to the agency.

Mr. Colvin. As you are most likely aware, this matter came to our attention as a direct result of information appearing in an article published in the January 22, 1985, Aerospace Daily entitled "Shuttle Marketing Award". That should have been known only to members of a NASA source evaluation board.

The investigation into the alleged leak of the information did not identify a specific NASA individual as responsible for leaking the information, and no culpability within NASA was identified. A few deficiencies in the NASA Headquarters evaluation process were discovered during the investigation.

One, personnel. Personal and professional relationships existed between one of the companies involved in the competition and two of the NASA people assigned to the source evaluation board. Second, personnel from one of the companies in the competition had access to NASA Headquarter's space. And third, security of the Source Evaluation Board's deliberative materials was inconsistent with their sensitivity.

Because of the deficiencies discovered during the investigation, recommendations were made to the appropriate NASA managers to: one, discipline NASA personnel whose conduct gave the perception of impropriety; two, establish controls over contractor access at NASA Headquarters, including revocation of access badges where necessary; and third, establish more stringent NASA Headquarters Source Evaluation Board procedures and an increased level of protection of NASA sensitive information.

Senator GORTON. The most recent semiannual report of your office showed audits of the shuttle spares and logistics programs which resulted in more than $4.5 million in one-time cost savings and over $400,000 in annual cost avoidances.

According to the same report, an audit by the Defense Contract Audit Agency of certain NASA contractors resulted in almost $29 million of net savings. These instances indicate that the audits of NASA contracts have certainly been effective, but do they also indicate that there may be some deficiencies in NASA's contracting activities which allow them to develop in the first place?

Mr. COLVIN. The above-cited instances do not indicate fundamental deficiencies in NASA contracting activities. Actually, they are two unrelated instances. The first instance refers to our internal audit report on multiple management of identical line items by onsite contractors conducted at Kennedy Space Center.

The logistics management practices to which this audit observation pertains are a result of the KSC management concept, which emphasizes self-sufficiency on the part of each of its onsite support contractors. It is not a contracting deficiency. The management at KSC believes other benefits from its self-sufficiency concept will offset the savings estimated by the audit. However, Kennedy is working to reduce the number of identical items managed as much as possible.

The almost $29 million of DCAA net savings is broken down as follows. Incurred cost audits were approximately $3.4 million; special audits, $1.8 million; individual bid proposals, $23.4 million; and cost accounting standards, $0.2 million. This represents net savings of $211,051,000 on costs questioned and sustained by Government negotiations as a result of over 3.3 billion proposed dollars examined. In reality, this savings is an indication of effective Government contract negotiations.

Senator GORTON. During the course of the last year, we have witnessed a parade of allegations about improprieties and sometimes even suggested criminal activities with respect to Department of Defense contracts with major aerospace and defense contractors.

Most of them also have contractual relationships with NASA. We have not seen any similar allegations with respect to NASA contracts with those firms. Why not?

Mr. COLVIN. In part, the answer to your question lies in the fundamental difference between NASA and Department of Defense, in that NASA is conducting a sizable amount of research and development with limited production at many of the same contractors where the Department of Defense has awarded large quantity production contracts.

The ability to measure compliance in a well-defined large quantity production contract is certainly easier in our experience than to do the same for small production research and development contracts. We have had occasion to investigate, sometimes jointly within DOD, companies that do business with both NASA and DOD, and we have reported or will report to the Congress in our semiannual report several instances of allegation against these companies that do business with both NASA and DOD.

As examples, I would like also to present the following: It was NASA, I believe in 1981, that reported the Rockwell International mischarging case. I think that that was probably a lead-in to a lot of the DOD reporting that we see now.

NASA has also reported the General Electric mischarging case resulting in over $1 million being returned to the Government. The Rockwell mischarging case resulted in $1.5 million being returned to the Government, plus a disallowance of $594,000, and, more recently, the Morton-Thiokol mischarging case, resulted in $576,807 being returned to the Government.

Senator GORTON. What is the size and composition of your staff?

Mr. COLVIN. The staff consists of approximately 102 full-time professionals. Composition is, approximately 50 percent of those are auditors. Approximately 25 percent are investigative, and then 25 percent would be support personnel.

Senator GORTON. Why did you decide after 10 successful years at the Federal Bureau of Investigation to make this kind of career change?

Mr. COLVIN. The inspector general concept is one that I have been associated with for many years through the Federal Bureau of Investigation. It is a concept that I believe very strongly in. I compliment the Congress on the passage of the Inspector General Act.

It also provided me, I think, opportunity to progress within the law enforcement system, and one that I welcomed.

Senator GORTON. Now that you look back on it, was it a good choice in your career?

Mr. COLVIN. Definitely it was; yes.

Senator GORTON. Senator Hollings has some questions which he will have submitted to you in writing.

[The following information was subsequently received for the record:]

POST-HEARING QUESTIONS OF SENATOR HOLLINGS

Question 1. There is much discussion of reducing the federal deficit by reducing waste, fraud and abuse in the Federal government. As a veteran law enforcement officer and employee of an Inspector General's Office, what level of waste, fraud and abuse exists within NASA?

Answer. It is difficult to quantify the level of waste, fraud and abuse within NASA. During my tenure at the agency I have found the corps of scientists and engineers to be a highly motivated, professional group extremely dedicated to achieving NASA's mission in an efficient manner. On the other hand, I recognize that the cost reimbursable method of contracting which NASA and other research and development entities utilize may not result in the most cost effective method of doing business. Also, since we are dealing with such large corporations, I have no reason to doubt that these bureaucracies mirror the amount of fraud, other criminal behavior, and waste in society as a whole. So, while I cannot measure the amount of fraud and waste, I have no doubt that the Office of Inspector General has a definitive mission for the forseeable future.

Question 2. NASA currently contracts with the Defense Contracting Auditing Agency to undertake its contractor audits. Would you please explain how long this contractual arrangement has existed? What is the annual level of funding? And what services does NASA obtain in return? Would NASA be better able to oversee its contractor operations if it has its own internal auditing capability for contractors operations?

Answer. The Defense Contract Audit Agency (DCAA) and its predecessor organization have been providing audit services for NASA since 1969, long before the enactment of the Inspector General Act. In Fiscal Year 1984, DCAA billed NASA for 198,036 direct hours, which is the equivalent of 124 staff years. We were billed at the DOD composite rate of $29.81 per hour, for a total of $5.9 million.

In return, DCAA conducted 1,777 audits, and $17.8 billion of contracts were audited. $1.7 billion were questioned by the auditors, $307 million were unsupported and $85 million were avoided. Net savings to NASA were $142 million in Fiscal Year 1984. In addition, we obtain overhead analyses from DCAA.

I do not believe it is necessary for NASA to have its own internal auditing capability for contractor operations. Among the reasons that NASA utilizes DOD auditors are that they are already located within the contractor plants and are familiar with the contractors' cost accounting systems. To add another layer of auditing activity would not be an efficient use of resources.

This is not to say that NASA has abrogated its oversight of contractor operations. The NASA IG is still responsible for the NASA audit program under the Inspector General Act and by internal agency directive. DCCA does perform audits upon request of the NASA OIG, and where warranted, the NASA OIG reserves the right to perform the contractor audit itself. This has been done on special occasions. Through routine liaison with DCAA and by taking an active role in DCAA audit planning as it affects NASA, the NASA OIG can effectively oversee contractor operations on a cost efficient basis and in an effective manner.

Question 3. In your opening statement you indicate that your "emphasis will continue to be procurement and contract related activities with a goal of contributing to the restoration of America's confidence in a reformed public contract environment." How do you intend to undertake this task? Are additional resources required—people, equipment and money? What actions could the Committee take to assist in this effort?

Answers. At the present time, I believe I can achieve my goal with the current level of staffing and funding allocated to the Office of Inspector General. All cases are prioritized, i.e., considered of high, medium, or low priority. Contract cases, particularly large dollar cases or cases in which criminal intent is indicated, are of high priority and are worked expeditiously. Moreover, our audit software package and other automated techniques permit the IG staff to analyze voluminous amounts of data in less time than it would take to accomplish the task manually. In addition, my recruitment of personnel is directed at individuals who have experience or aptitude in handling complex, white collar cases, in which the analysis of the paper trail plays a crucial role. The Office of Inspector General is also active in reviewing and drafting regulatory and legislative proposals which, I believe, will either assist the OIG in its efforts or will aid in reforming the government contract arena.

In the past, the Committee has been helpful in introducing legislation which has assisted the OIG in carrying out its mission, e.g., the authorization act provision on oath administration. I am grateful to the Committee for its efforts in the past, and I will not hesitate to call upon the Committee in the future should other legislative initiatives be thought to assist the OIG in accomplishing its statutory mandate.

Senator GORTON. I am very pleased with your nomination. We are delighted to have you here this morning. The committee is adjourned.

[Whereupon, at 9:50 a.m., the committee was adjourned, to reconvene upon the call of the Chair.]

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